

THESE ARE THE TERMS AND CONDITIONS ON WHICH MIRACLON WILL SUPPLY THE CUSTOMER WITH THE EQUIPMENT, THE SUPPORT SERVICES AND THE CONSUMABLES. THE CUSTOMER AGREES TO BE BOUND BY MIRACLON'S TERMS AND CONDITIONS CONTAINED BELOW.

## **Miraclon's Terms and Condition (T&C's)**

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

1.1. Where capitalized terms are used in the Agreement or these Miraclon T&C's then the following definitions shall apply:

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

**"Applicable Law"** shall mean all laws of any country as amended from time to time, which apply to the Products included in the Agreement including without limitation the following: civil law, common law, international law and regulations of any local, national or international authority.

**"Certified Maintenance Technician"** and **"Certified Operator"** shall mean an individual who is currently certified by Miraclon as having successfully completed all applicable certification training (including any applicable new Products, Services and Software or any updated training), at the Customer's expense.

**"Completion of Installation"** shall mean, for the Equipment and the Software, that the Equipment and/or the 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 in which case the Completion of Installation shall be the date of Delivery.

**"Confidential Information"** shall mean any information which is marked as confidential, or is by its nature clearly confidential including, without limitation, financial and operational information pertaining to the business (including system password), non-released test products, drawings, designs or manuals relating to the Products, any information relating to either Miraclon or the Customer's services, operations, prices, service information, design rights, trade secrets, and which is disclosed (whether in writing, verbally or by any other means) by the Disclosing Party, whether directly or indirectly, to the Receiving Party.

**"Consumables"** shall mean the media (including 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"** shall mean components of the Equipment which are replaceable by the Customer, as determined by Miraclon, without the necessary on-site assistance by Miraclon.

**"Delivery"** shall mean for the Equipment, the Software and the Consumables DAP (Delivered At Place Incoterms® 2020) the Customer's Site ground floor and for Parts FCA (Free Carrier Incoterms® 2020) at Miraclon's 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 (i) the hardware which the Customer is purchasing/renting/leasing as identified in Schedule - Equipment, Software and Professional Services and (ii) the hardware covered by a Support Plan, where the Customer is receiving Support Services.

**"Goods"** shall mean the Equipment, the Software, the Consumables, the Parts and/or non-released test products.

**"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.

**"Initial Support Term"** shall have the meaning given in Section 12.2 below.

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

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

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

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

**"Products"** shall mean Goods and/or Services.

**"Receiving Party"** shall mean the Party receiving Confidential Information.

**"Schedule"** shall mean a Schedule to the Agreement.

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

**"Services"** shall mean Support Services, Training, Start-up Assistance and professional Services.

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

**"Software"** shall mean (i) the software contained in the Equipment, (ii) third party software embedded in Miraclon's software or in the Equipment, (iii) all software identified in Schedule - Equipment, Software and Professional Services, (iv) any software modifications which are provided to the Customer by Miraclon, in its sole discretion, (v) all user materials and other documentation and (vi) cloud platform.

**"Software Support License"** shall mean a license to download or to install a Software Update or a 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 the Software, in object code form, or firmware, which provides minor fixes, improvements and modifications to the Software or the Equipment.

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

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

**"Support Commencement Date"** shall mean the commencement date for the supply of the technical support plan provided by Miraclon as set out in the Schedule - Support Services.

**"Support Plan"** shall mean a technical support offering that sets out the level of entitlements purchased by the Customer as described in detail in Schedule - Support Services.

**"Support Services"** shall mean the Equipment and the Software maintenance and support service as further described in Schedule - Support Services which may include, without limitation, training (optional or mandatory) in addition to standard Training as defined in Schedule - Equipment, Software and Support Services, Equipment modifications, remote online support and other process improvement services.

**"Training"** shall mean classroom or onsite training provided by Miraclon in the use and operation of the Equipment and/or the Software and (unless otherwise stated) the price of Training is included in the price of the Equipment and/or the Software.

**"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.

**"Warranty Period"** shall have the meaning given in Section 9 below.

1.2. Headings in these Miraclon T&C's are for convenience only and shall not affect their meaning or interpretation.

1.3. Words having the singular meaning include the plural meaning.

1.4. A reference to writing or written includes email communication.

### **2. Agreement.**

2.1. Miraclon agrees to sell and/or license to the Customer and the Customer agrees to purchase and/or license from Miraclon the Products as identified in the Schedules on the relevant terms and conditions set out or referred to in the Agreement and these Miraclon T&C's.

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

Orders for Consumables may be subject to minimum order values, quantities and maximum frequency.

**2.3.** All orders shall be placed via the Miraclon online ordering process, where available. If online ordering process is available, orders via any other means (phone, facsimile, mail, e-mail, etc.) may be subject to a surcharge to reflect additional handling efforts for processing.

**2.4.** The terms of the Agreement and these Miraclon T&C's contain the entire agreement between the Parties and cancel all previous terms of business between Miraclon and the 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.

### **3. Delivery.**

**3.1.** Miraclon shall make reasonable efforts to deliver the Products as communicated by Miraclon. Delivery times are estimates only and Miraclon shall not be liable for failure to deliver within such time.

**3.2.** In case of delays caused by Force Majeure as specified in Section 18.3, Miraclon shall have the right either to suspend deliveries without notice or cancel the order without liability.

**3.3.** This Agreement covers the delivery of multiple orders of Products to the Customer during the lifetime of the Agreement. Each order will be treated on its own as a separate agreement and shall be governed by the terms and conditions of the Agreement. Each order shall be paid on the due date as a condition precedent to further deliveries. Any defect in any order of Goods shall not be grounds for cancellation of the remaining orders and this Agreement.

**3.4.** The Customer shall inspect the Goods immediately on Delivery to ensure compliance with the Agreement and these Miraclon T&C's.

**3.4.1. Delivery note.**

Incomplete Deliveries/Product missing from order(s) must be reported in writing to Miraclon within twenty-four (24) hours of Delivery of Products in accordance with this Section. A delivery note is provided with each Delivery. It is the Customer's or its agent's responsibility to sign and print their name on the delivery note confirming receipt of the order. Any shortages or damage must be clearly noted on the delivery note before the Delivery is completed. Claims for shortages or damage not marked on the delivery note will not be accepted.

**3.4.2. Non-delivery.**

The Customer must notify Miraclon in writing of non-Delivery or related invoice queries within seven (7) days of the Goods invoice date.

**3.4.3. Complaints and Returns.**

**3.4.3.1.** The Customer shall, within five (5) days of Delivery, give Miraclon customer service a written notice of any carton shortages and damage reasonably apparent from a further inspection that were not reasonably apparent on the inspection at Delivery.

**3.4.3.2.** The Customer shall give Miraclon written notice of any defect in Goods not reasonably apparent on inspection at Delivery within two (2) days of the Customer discovering such defect.

**3.4.3.3.** Quality complaints relating to the Consumables or the Parts must be accompanied by the claimed damaged or defective Consumables or the Parts showing the reported defect together with the identification references.

**3.4.3.4.** Where Miraclon is satisfied that the Consumables or the Parts were damaged or defective on or before the date on which risk passes to the Customer, Miraclon shall repair or replace them free of charge or, at its discretion, credit the Customer with the price of the Consumables or the Parts. Subject to Section 3.4.3.5, any Consumables or Parts replaced or credited shall be returned to Miraclon. In the event that Miraclon allows the Customer to retain such Consumables or Parts, then any credit shall be reduced by any recovery or scrap value of such Consumables or Parts; Miraclon reserves the right to request a certificate of destruction originating either from a third party or self-declaration from the Customer.

**3.4.3.5.** Goods may only be returned to Miraclon with Miraclon's prior agreement, and when Miraclon shall arrange collection and issue a collection note, otherwise Miraclon shall not be liable for any loss of, or damage to, Goods.

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

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

**4.2.** Subject to the provisions of the Software license, title to the Equipment will pass from Miraclon to the Customer upon payment in cleared funds of all amounts due to Miraclon, however incurred. Title to the Consumables and the Parts will pass from Miraclon to the Customer upon Delivery.

**4.3.** Until full ownership passes to the Customer, the Customer shall maintain the Equipment in good order and shall keep the Equipment insured against all risk of loss or damage for Miraclon and shall provide Miraclon with proof of insurance upon request.

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

**5.1.** Except for self-installable Equipment, Miraclon shall install the Equipment at the Customer's Site at a mutually agreeable time. Prior to installation, the Customer shall, at its expense, complete all applicable Site preparations as specified by Miraclon and Applicable Law. Upon Completion of Installation at the Customer's Site, a Miraclon representative shall present the Customer with a report stating that the Equipment and/or the Software has been duly installed and Miraclon has achieved Completion of Installation.

**5.2.** Miraclon shall provide Training and Start-up Assistance as described in Schedule - Equipment, Software and Professional Services. The Customer shall be responsible for scheduling all Training prior to installation and has thirty (30) days from Completion of Installation to complete Training. Failure to schedule or complete Training shall not constitute a cause to delay any payment under the Agreement. Unless otherwise stated in Schedule - Equipment, Software and Support Services, classroom Training will be conducted at Miraclon's premises and the Customer shall be responsible for all travel, living and other costs incurred by the Customer in connection with the Training.

**5.3.** The Customer shall ensure that all safety information provided by Miraclon relating to the Products is passed on to the Customer's employees, contractors and representatives or Product users. The Customer shall not alter, mask or remove any safety information from the Goods.

### **6. Services.**

**6.1. Services.** The Customer shall perform its responsibilities as and when communicated by Miraclon in a timely manner. Miraclon shall not be responsible, or otherwise liable, for any delays caused by a failure of the Customer to timely perform its responsibilities.

**6.2. Support Services.** Miraclon will perform Support Services in accordance with the applicable statement of work, which shall describe the specific responsibilities of the Customer and Miraclon. The Customer shall perform its responsibilities identified in any applicable statement of work in a timely manner. Support Services will be performed within a reasonable time after Completion of Installation of the Equipment and the Software. For self-installable Products or self-training Products, the Customer must perform such installation or training prior to Miraclon's performance of any Support Services. The Support 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 seven (7)-hour day basis. If additional time is needed at the Customer's 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.

**6.3.** Subject to the terms of the Agreement and these Miraclon T&C's, Miraclon shall provide the Support Services in accordance with the Support Plans and the Software Support License on the terms and conditions set out or referred to in the Agreement, including these Miraclon T&C's.

**6.3.1. Customer responsibilities.**

**6.3.1.1.** The 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 necessary access to enable Miraclon to provide the Support Services during normal business hours; (iv) provide assistance, information, services, the Consumables and facilities as may be requested by Miraclon to provide the Support Services; and (v) promptly return to Miraclon, as requested, all replaced Parts.

**6.3.1.2.** The Customer is responsible, following Delivery, for risk of loss or damage to any Parts shipped to them that Miraclon shall use to carry out any Equipment repairs

**6.3.1.3.** The Customer is responsible for any harm suffered by any Miraclon's personnel from improper use or modification to the Products.

- 6.3.1.4. Any Parts due for return will be packaged by the Customer and Miraclon shall arrange collection of these Parts. If the Customer does not allow pick up of these Parts within fourteen (14) days, then Miraclon shall charge the Customer for the equivalent price of the Parts due for return at Miraclon's then current rates.
- 6.3.2. **Restrictions.**
- 6.3.2.1. **Customer's employees.** The Customer shall not permit any other persons to provide maintenance or support for the Equipment and/or the Software where Miraclon is providing Support Services, 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 the Customer permit any of its employees or contractors or other persons to provide maintenance or support for the laser components of the Equipment.
- 6.3.2.2. **Improper use of the Products; Environmental Conditions.** Miraclon shall not be liable for resolving problems relating to (i) improper use of the Equipment and/or the Software for which Miraclon is providing Support Services, (ii) the configuration of the Site, including the 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.
- 6.3.2.3. **Consumables use.** The Customer is expected to provide updated Consumables forecasts, on a quarterly basis for the following three (3) and six (6) month periods, for all Consumables. Miraclon shall not be responsible for resolving any problems caused by operation or use of the Equipment with the consumables not qualified by Miraclon for use with the Equipment or with the consumables for which the Equipment is not designed or configured to operate/be used with (e.g. regarding plate type and size).
- 6.3.2.4. **Software Updates and Upgrades.** Miraclon shall not be responsible for any hardware upgrades that are necessary with regard to the Software Updates and Software Upgrades.
- 6.3.2.5. **Relocation of the 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 be eligible for Support Services under the Support Plan or Software Support License if (i) the Customer gives Miraclon reasonable prior written notice of the Customer's intent to move such Equipment, (ii) Miraclon agrees to provide support at the new Customer site and (iii) 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; Miraclon's actions cannot be interpreted as providing any guarantee for the Equipment. The Customer is responsible for all relocation and associated costs.

## **7. Cancellation of services pertaining to the Equipment and the Software.**

7.1. **Additions.** In the event that the Customer has the Equipment and the Software under a Support Plan or Software Support License and the 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 the Customer notifies Miraclon otherwise at least thirty (30) days prior to the expiration of the warranty. In such cases, the end of the warranty shall be considered the Support Commencement Date.

7.2. **New Support Plan or Software Support License.** In the event that the Customer has equipment and software that is not under a Support Plan or Software Support License and is no longer under warranty or the Customer acquires used equipment and software from a third party, and the Customer wishes to purchase a Support Plan or Software Support License for such equipment and software, the Customer may do so subject to Miraclon's inspection and acceptance. The 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.

### **7.3. Cancellation.**

- 7.3.1. Following the Initial Support Term, the Customer may cancel the services pertaining to the Equipment and the Software from a Support Plan or Software Support License by providing Miraclon written notice, in which case the removal shall be effective three (3) months following the end of the month of notification and the Service Fee shall be adjusted accordingly. In the event that the Software is covered under a Software Support License, there will be no refund or credit of pre-paid fees. Notwithstanding the foregoing, should the Customer finance a pre-paid Support Plan or Software Support License through a financing company, the Customer shall be required to secure approval from the financing company prior to any deletion.
- 7.3.2. Miraclon may remove the Equipment and the Software from a Support Plan or terminate a Software Support License by providing the Customer written notice, in which case the removal shall be effective three (3) months following the end of the month of notification and the Service Fee shall be adjusted accordingly.

## **8. Price and Payment.**

8.1. **Price and payment.** The Customer shall pay the price of the Products in full and in cleared funds in accordance with the agreed payment terms in the Agreement. 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. Any Service Fee to be paid by the Customer shall be due and payable in full in advance of the period to which the relevant Support Services pertain.

8.2. Time of payment is of the essence and if the Customer fails to pay any amount when due, then the Customer shall 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 Goods, suspend Services, alter payment terms, repossess the Goods, 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 one and a half percent (1.5 %) of the overdue balance along with any resulting administrative and legal cost. Any other amounts outstanding from the Customer to Miraclon shall also become due and payable immediately.

8.3. **Support Services pricing changes.** Support Services pricing is subject to change, at any time during or following the Initial Support Term. In addition, 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's price changes, then Miraclon shall give the Customer a written notice of these changes at least thirty (30) days before the change is implemented.

8.4. **Additional cost items.** Miraclon reserves the right to charge the Customer under a Support Plan or Software Support License for additional expenses that may be incurred by Miraclon as follows:

- 8.4.1. **The Equipment and the Software.** Customer's (a) changes to the configuration of the Equipment or the Software, or (b) postponement of Delivery or installation of the Equipment or the Software will be subject to a charge from Miraclon;
- 8.4.2. **Support Services.** Without limitation, hourly labor 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 will be subject to a charge from Miraclon:
- 8.4.2.1. 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;
- 8.4.2.2. 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;
- 8.4.2.3. the Customer operates the Equipment with (1) hardware or software which has not been approved or licensed for use by Miraclon; (2) a version of the Software which is not the latest released Software Upgrade, or which does not contain the latest Software Update; or (3) consumables not authorized by Miraclon for use with the Equipment;
- 8.4.2.4. Support Services are provided outside the hours of coverage specified in the Support Plan or Software Support License or Customer's failure to provide timely access to the Site and/or Equipment;

- 8.4.2.5. emergency weekend on-call Support Services are provided;
- 8.4.2.6. the Customer has no internet connectivity as requested by Miraclon;
- 8.4.2.7. Miraclon installs self-installable Equipment at the Customer's request; or
- 8.4.2.8. replaced Parts are not returned as directed by Miraclon.

**8.5. Consumables pricing changes.** This clause is only applicable in the absence of any price inflation clause in the Agreement.

Notwithstanding any provision to the contrary in the Schedule - Consumables and subject to a prior written notice of minimum thirty (30) days to the Customer, Miraclon may at any time increase the price of the Consumables.

Without prejudice to the Schedule - Consumables, all prices quoted are also exclusive of any temporary surcharge that Miraclon, to cover any significant increases in fuel, tariffs or transportation or raw material costs to Miraclon, reserves the right to introduce at any time with minimum thirty (30) days prior written notice to the Customer.

Prices charged are those ruling at the date of ordering.

**8.6.** The Equipment prices do not include, and the Customer shall pay for: (i) costs for additional tools or equipment (e.g. crane, forklift and in general costs for transport of the Equipment from deposit area 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 and these Miraclon T&C's, including Sections 6.2 and 7.2, may also apply.

**8.7.** 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. Miraclon reserves the right at any time and without notice to adapt Customer's credit facility. The Customer shall give notice to Miraclon of deterioration of Customer's financial conditions.

**8.8. Customer Financial Statements.** Upon Miraclon's request and to establish or continue credit facility with the Customer, the Customer shall provide Miraclon a copy of its latest audited or approved financial statements no older than eighteen (18) months.

**8.9.** All cost relating to trade financing instruments (such as, but not limited to, Letter of Credit, Documentary Credit) that Miraclon may request shall be borne exclusively by the Customer.

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

**8.11.** Miraclon may appropriate any payments received to any outstanding invoice.

**8.12.** Any rebate allowances or other amounts due to the Customer will be dealt with by (i) credit note, which will be used to offset any outstanding amounts owed by the Customer to Miraclon, or (ii) where offsetting is not possible, via electronic payment to the Customer's bank account; same bank account from which the Customer pays Miraclon.

**8.13. Set off.** All amounts due to Miraclon shall be paid on time, in full, in cleared funds, without any deduction or withholding of tax or bank transfer charges (other than 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 these Miraclon T&C's 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.

**8.14.** If any amounts due hereunder remain to be paid by the Customer and title to Product is deemed to have transferred to the Customer, the Customer hereby grants to Miraclon a security interest in the Products and all proceeds thereof. The Customer agrees to take such action as Miraclon may reasonably request to perfect and protect such security interest. The Customer acknowledges that Miraclon may file UCC-1 financing statements covering the Products or any similar legal tool applicable in the relevant jurisdiction (the "Financing Statements"). The Customer hereby authorizes Miraclon to file the Financing Statements and any continuation statements or amendments without the signature of the Customer where permitted by law. If filing without the Customer's signature is not permitted by law, the Customer agrees to provide any necessary information and sign the Financing Statements at Miraclon's request.

## **9. Warranty.**

**9.1. The Equipment and the Parts Warranty.** The Equipment shall be free from material defects in materials and workmanship, subject to normal use and recommended service, 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) twelve (12) months from the date of Completion of Installation of the Equipment, and (ii) fourteen (14) months from the date of Delivery by Miraclon. Parts shall be free from material defects in materials and workmanship for a period of twelve (12) months from Delivery. Miraclon specifically does not warrant that the Equipment or the Customer's configuration will operate uninterrupted or error free.

**9.2.** During the Warranty Period, Miraclon shall provide at its discretion: (i) remote assistance during business days, Monday to Friday from 08:00 until 17:00 local time at Miraclon's regional office; (ii) on-site assistance during business days Monday to Friday from 08:00 until 17:00 local time at Miraclon's regional office and Parts necessary to repair the Equipment; (iii) on-line assistance through the e-center; (iv) Parts and services as specified in Field Change Orders issued by Miraclon during the Warranty Period.

**9.3.** Subject to the provisions of Section 10.1, the Customer's sole remedy under the warranty described in this Section shall be, at Miraclon's discretion, (i) to repair or replace the defective or non-conforming Part or (ii) refund of the actual amount paid by the Customer for the defective Equipment or Part.

**9.4. Non-Customer Replaceable Units Warranty.** Non-Customer Replaceable Units must be installed under the supervision of a Miraclon Certified Maintenance Technician or Certified Operator. Failure to do so will invalidate any warranties provided by Miraclon.

**9.5. Professional Services/Support Services Warranty.** Subject to the provisions of Section 10.1, the Customer's sole and exclusive remedy shall be, at Miraclon's option, (i) re-performance of the non-conforming Professional Services or Support Services, or (ii) refund of the amount paid by Customer for the non-conforming Professional Services or Support Services. Further exclusions contained in Section 10.4 relating to additional charges also apply.

**9.6. Consumables Warranty.** Miraclon warrants that at Delivery, and for a period of two (2) months after Delivery, the Consumables will conform to their specifications, provided that they are stored and used in accordance with such specifications. In the event of any claim by the Customer, Miraclon's liability shall be limited, at Miraclon's option, to (i) replacement of the Consumables that are the subject of the claim or (ii) refunding the cost of such Consumables. There are no warranties on Consumables such as filters and light bulbs.

**9.7. Shine LED Lamp Kits** (hereafter defined as the 'Goods') shall be free from material defects in materials and workmanship, subject to normal use, recommended service and warranty limitations, for the warranty period set forth below. The Miraclon warranty shall be for a period of three (3) years from the date of shipment by Miraclon to the Customer. Miraclon specifically does not warrant that the Goods will operate uninterrupted or error free. The Customer's sole remedy under the warranty described in this Section shall be to replace the defective or non-conforming Good. The Goods must be installed using a Customer qualified electrician to electrically modify Customer's UV exposure hardware following the equipment electrical schematics and documentation and Miraclon's installation recommendations for the Goods. Customer's modification to the UV exposure hardware in accordance with Miraclon's installation recommendations for the Goods, will have no impact to the Miraclon warranty or to the services covered under a Miraclon service agreement.

Miraclon will not provide services to modify any Customer's UV exposure hardware. Failure to modify any Customer's UV exposure hardware will invalidate any warranties on the Goods provided by Miraclon. The Customer is responsible and liable for any hardware modifications to its UV exposure hardware using the Goods and for any potential impacts to third party warranties or third party services relating to the Customer's UV exposure hardware.

**9.8. Warranty claim and 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 authorized agents, (iii) interoperation with other non-Miraclon supplied products, (iv) improper installation, service or modification by persons other than Miraclon or its authorized agents, (v) use in an environment or a manner or for a purpose for which the Goods were not designed or intended, (vi) unusual physical

or electrical stress, (vii) improper storage or the use of unauthorized chemistries or processing equipment, or (vii) any cause other than ordinary use. 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.

**9.9.** Subject to the provisions of Section 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.

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

**10.1.** Nothing in the Agreement and in these Miraclon T&C's 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 Section 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 that the Customer paid for the specific Products that directly gave rise to the damages claimed, regardless of the basis on which the injured Party claims. IN NO EVENT SHALL MIRACLON OR ITS PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, LICENSORS, MANUFACTURERS, SUBCONTRACTORS AND SUPPLIERS BE LIABLE FOR ANY KIND OF SPECIAL, CONSEQUENTIAL PUNITIVE, OR EXEMPLARY DAMAGES FOR ANY REASON OR UNDER ANY THEORY OF LIABILITY WHATSOEVER.

**10.3.** Subject to Section 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.** The 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 the Equipment is connected to the public internet. Subject to Section 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. The 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 of the Goods with other manufacturer's hardware, media or software, which have not been qualified by Miraclon.

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

#### **11. Software.**

**11.1. License.** Miraclon grants to the Customer a non-exclusive, non-transferable, non-sub licensable license to use the Software, provided that the Software is used only (i) for the Customer's internal business purposes, (ii) on the single computer system on which it is installed, and (iii) only in the country of the Customer's place of business as stated in the Agreement. The Customer shall not pool or share the Software between or among multiple computers, except as authorized by Miraclon.

**11.2. Ownership.** No title to, or ownership of, the Software is transferred to the Customer and any use of the terms "sell", "sale," "purchase" or "acquire" in relation to the Goods with respect to the Software shall be deemed to mean "license on the terms contained in the Agreement". Neither the Customer nor any of its agents or employees shall (i) copy the Software except for one (1) copy for back-up purposes; provided such copy shall contain all proprietary notices and other markings appearing on the Software, (ii) 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, (iii) merge the Software into any other program, or (iv) use all or any portion of the Software for the purpose of deriving its source code. Upon termination of the Software license the 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 and these Miraclon T&C's that relate to their rights in the Software. Miraclon is under no obligation to provide Software Updates for third-party software.

**11.4. EULA.** Some of the Software may be subject to the terms of a End-User License Agreement ("**EULA**"). The EULA is integrated in a digital form in the Software and is readable before installation for the Customer's acceptance. The terms of the Agreement, these Miraclon T&C's 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 or these Miraclon T&C's, the terms of the EULA shall prevail.

**11.5. Transfer of License.** Notwithstanding the provisions of Sections 11.1 and 11.2, if the 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 Section, the 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 unless and until either Party terminates the Agreement by giving three (3) months' written notice to the other expiring at the end of the Initial Period or at any time thereafter.

**12.2.** 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. 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 twelve (12)-month periods at the Service Fee indicated in Schedule - Support Services (subject to price increases as described under Section 8.3), unless the Customer provides Miraclon with written notice of non-renewal three (3) months prior to the end of the Initial Support Term or any twelve (12)-month renewal period.

**12.3.** Miraclon may, by written notice to the Customer, terminate the Agreement or suspend the supply of Products immediately in the event (i) that the Customer fails to make any payment due to Miraclon or to a finance company financing the Equipment, and/or Software within fourteen (14) days of the due date; (ii) of any insolvency or bankruptcy proceedings by or against the Customer including appointment of a receiver; (iii) the Customer is in breach of any material provision of the Agreement or these Miraclon T&C's, which is not rectified within thirty (30) days of written notice requiring rectification and/or (iv) of the occurrence of anything analogous or having a substantially similar effect to any of these preceding Sections or matters under the Applicable Law. Such termination shall be without prejudice to the Parties' accrued rights, provided that, subject to Section 10.1, Miraclon may without liability cancel any outstanding orders, re-possess Equipment and unpaid Consumables and provided that Miraclon shall not be liable for any termination damages or compensation however arising.

**12.4.** If the Customer cancels an order for Goods for any reason before shipment, Miraclon shall be entitled to retain or invoice the Customer ten percent (10%) of the value of the relevant cancelled order and any additional costs incurred by Miraclon.

#### **13. Restriction on the Resale of Products.**

The Customer represents that it is purchasing the Products as a professional end-user. Except as otherwise provided by law, the Products may only be used for internal business purposes and are not for resale. Miraclon reserves the right to refuse orders for the Products if it reasonably believes that the Customer is reselling the Products. Any credible evidence of the resale of the Products by the Customer shall be deemed to be a material breach of this Agreement.

#### **14. Confidentiality.**

**14.1.** The Receiving Party shall use Confidential Information received solely for the purposes of performing its obligations in accordance with the terms of the Agreement and these Miraclon T&C's.

**14.2.** 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 subcontractors but only to the extent necessary for the performance of its obligations under the Agreement and these Miraclon T&C's. 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.

**14.3.** The provisions of this Section 14 shall not apply to any Confidential Information:

- 14.3.1. to the extent that it is or comes into the public domain otherwise than as a result of a breach of the Agreement or these Miraclon T&C's by the Receiving Party;
- 14.3.2. 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;
- 14.3.3. 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;
- 14.3.4. which has been independently developed by the Receiving Party without access to the Confidential Information; or
- 14.3.5. which is required to be disclosed by any Applicable Law.

**14.4.** The provisions of this Section 14 shall survive the expiry or termination of the Agreement and continue for a period of three (3) years following the date of expiry or termination of the Agreement.

#### **15. Intellectual Property.**

**15.1.** The Customer shall not use Miraclon trademarks without written authorization from Miraclon, it being understood that nothing in the Agreement or these Miraclon T&C's shall imply such authorization.

**15.2.** Intellectual property rights associated with the Goods belong to Miraclon (except where owned by a supplier of Miraclon) and are reserved by Miraclon on the sale of Goods. 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 Goods, including the right to sue for damages or other remedies in respect of any infringement.

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

**15.4.** If any qualifying Goods 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, shall (i) obtain for the Customer the right to continue using the Goods, (ii) replace infringing Goods with non-infringing Goods, (iii) modify the Goods so that they do not infringe, or (iv) remove them and refund the purchase price paid, less a reasonable depreciated value for use.

#### **16. Data protection.**

**16.1.** Both Parties acknowledge that for the performance of the Services hereunder, either Party may provide the other Party with personal information. Both Parties represent and warrant that this personal information has been collected in accordance with Applicable Law and that they have the authority to provide such data to the other Party. Both Parties shall process the personal information as required or permitted by Applicable Law.

**16.2.** 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, the Customer (and its affiliates) act as data controllers (as that term may be defined in the Privacy Laws) and Miraclon, its affiliates and sub-processors act as data processors.

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

**16.4.** The 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 Laws as applied to data processors.

**16.5.** The Customer authorizes Miraclon to collect equipment and software data (possibly including Personal Data) from Customer's devices used for the purposes of the Agreement.

#### **17. Financing (when applicable).**

**17.1. Title to Financed Products.** The legal ownership in the Financed Products shall pass to the Financing Company or to the Customer, as directed by the Financing Company upon payment in full. Miraclon shall retain ownership of Software and rented Equipment in all circumstances.

**17.2. Miraclon's Right to Payment for Financed Products.** Unless otherwise agreed to in writing by Miraclon, the Customer or the Financing Company shall pay Miraclon hundred percent (100%) of the Product price upon Completion of Installation of the Goods.

17.2.1. **Delivery and Acceptance.** If the Financing Company requires the Customer to sign a delivery and acceptance certificate or other similar document confirming that the Financed Products have been delivered, installed and are operating ("D&A Certificate"), the Customer shall sign such D&A Certificate within three (3) days of Completion of Installation of each phase.

17.2.2. **Non-Payment by the Financing Company.** In the event that the Financing Company fails to pay Miraclon for the Financed Product for any reason, the Customer is responsible for the full purchase price and shall pay such purchase price to Miraclon within five (5) days of notification from Miraclon of non-payment by the Financing Company.

17.2.3. **Miraclon's Remedies for Non-Payment.** In addition to any rights that Miraclon may have under law, equity or this Agreement, failure of the Customer to comply with this Section shall be deemed a material breach of this Agreement and may result in Miraclon (i) disabling the Financed Products, (ii) terminating any software license agreement relating to the Financed Products, (iii) charging a rental and remediation fee and/or interest in accordance with Miraclon's then current policies and procedures, (iv) suspending or terminating services, (v) repossessing the Financed Products and (vi) at Miraclon's option, taking an assignment of the financing documents from the Financing Company against a reasonable fee in order to exercise rights thereunder against the Customer.

**17.3. The Customer's Obligations.** Under no circumstances shall the terms and conditions of the Financing Company's documentation relieve the Customer of any of its obligations, responsibilities, or undertakings under this Agreement.

#### **18. Miscellaneous.**

**18.1. Compliance with laws.** Both Parties agree, at all times, to comply in material aspects with Applicable Law. The foregoing expressly includes all applicable anti-bribery and corrupt practices laws, including without limitation the Bribery Act 2010 (U.K.), the U.S. Foreign Corrupt Practices Act 1977, and any additional anti-bribery, corruption, commercial bribery, money laundering, or terrorist financing laws applicable to the Party.

**18.2. Assignment/Change of control.** The Customer shall not assign its obligations under the Agreement or these Miraclon T&C's, nor delegate or subcontract any performance, nor agree on or allow a change of control, without Miraclon's prior written consent, which consent shall not be unreasonably withheld. Miraclon may (i) assign all or part of its rights and obligations under the Agreement or these Miraclon T&C's in connection with a sale of the business or assets to which this Agreement relates or in relation to the sales/licensing/supply of the Products, (ii) assign all or part of its rights and obligations under the Agreement or these Miraclon T&C's to Miraclon affiliates without restriction, (iii) sub-contract its obligations or

(iv) carry out its obligations through Miraclon affiliates without restriction.

**18.3. 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 without limitation strike, lockout, labor disputes or shortages, riot, revolution, mobilization, 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, 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, or these Miraclon T&C's, will be postponed by such period as may be reasonable necessary to compensate for delay.

**18.4. Sanctions/Export Control.** The Customer shall comply with all sanctions and export control laws and regulations to the extent that they apply to the Customer.

**18.5. Amendment, Modifications.** Any amendment or modification to the Agreement or these Miraclon T&C's shall be made in writing and signed by authorized representatives of both Parties or shall be of no effect.

**18.6. 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.

**18.7. Severability.** If any part of the Agreement or these Miraclon T&C's is held unenforceable, the validity of the remaining provisions will not be affected.

**18.8. Representations.** The terms of the Agreement and these Miraclon T&C's supersede all prior drafts, agreements, arrangements, understandings and discussions between the Parties or their advisors 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 prior communication between the Parties. Nothing in this Section shall limit or exclude any liability for fraud or fraudulent misrepresentation.

**18.9. Enforcement.** Each Party shall be liable for all costs incurred by the other Party (including reasonable 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 and/or these Miraclon T&C's.

**18.10. Notices.** All notices to be given under the Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or electronically mailed or sent by courier at the address specified in the heading to the Agreement or to such other address as may be notified by the Party concerned as set out in this Section and shall be deemed to be given when delivered in person or by courier, or two (2) days after the electronic mail was sent.

**18.11. Entry into the Agreement.** The Agreement may be entered into by electronic means. The Agreement will come into effect on the Effective Date upon signature by the authorized representatives of both Parties.

**18.12. Governing law & Jurisdiction.** The Agreement and all matters relating to the Agreement shall be governed by and construed in accordance with the laws of Singapore, and each Party hereby submits to the exclusive jurisdiction of the courts of Singapore provided that either Party shall be entitled to enforce any award made by or any judgement or decision of the courts of Singapore in any other jurisdiction and Miraclon may commence proceedings in any court with jurisdiction. The application of United Nations Convention on Contracts for the International Sale of Goods (1980) shall not apply.