

Terms and conditions – Imetrum goods and services

Imetrum's terms and conditions of sale form the basis for our intent to offer and supply our goods and services.

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1. Terms of Contract

- 1.1 Provision of goods and services by Imetrum are deemed in to be made under the Terms and Conditions of Sale set out in this document unless approved by a director of the Company. The Terms and Conditions below form the basis for both our intent to offer and supply our goods and services. Imetrum reserves the right to supply suitable alternative components of equivalent or better specification. Purchase orders referencing Terms and Conditions other than those set out in our offer to supply will not be accepted.
- 1.2 The Customer represents and warrants that in deciding to enter into the Contract it has not relied on any representations, warranties or advice given by any person (including Imetrum and its representatives) other than those which are set out in these Imetrum Terms and those which Imetrum has communicated to the Customer in writing.
- 1.3 A variation of these Imetrum Terms does not form part of the Contract or have any effect, unless the variation has been signed by a director of Imetrum.
- 1.4 The Customer represents, warrants and agrees that any terms and conditions which are in or accompanying its order, or its acceptance of Imetrum's offer, do not form part of the Contract or have any effect.

2. Supply of the Equipment

- 2.1 Imetrum shall supply the Equipment, and the Customer shall accept it and pay for it, on and subject to these Imetrum Terms.
- 2.2 If it has been agreed that Imetrum will or may deliver the Equipment in instalments, the Contract operates as a series of separate Contracts in respect of each agreed delivery, and Imetrum's breach of one or more such Contracts will not constitute a breach or repudiation of the others and will not entitle the Customer to terminate the others.
- 2.3 Upon delivery, the Customer will automatically acquire a licence to use the software element of the Equipment on the terms of the End User Licence.
- 2.4 At any time before delivery, the Seller is entitled to modify the Equipment as it considers appropriate for the purpose of avoiding a breach of any law or regulation in

force in any part of the world, or an infringement of any third party's legal rights in any part of the world, by reason of the manufacture, supply, export, import, possession or use of the Equipment.

2.5 Imetrum shall deliver the Equipment by handing it to a carrier for transport and delivery on to the Customer. The carrier will receive the Equipment as the Customer's agent, whether the carrier has been selected and/or engaged by the Customer or by Imetrum.

2.6 Time is not of the essence of the Contract, and any time which has been agreed for the delivery of the Equipment is approximate.

2.7 The Equipment will be entirely at the Customer's risk from the time of its delivery.

2.8 Notwithstanding delivery of the Equipment, Imetrum will retain title to it until it has received the price in full in cleared funds, whereupon title to the hardware components of the Equipment will transfer to the Customer.

2.9 Imetrum Equipment is designed to be used with Imetrum Systems. Imetrum will not be liable for any support or returns where Equipment is being used with non-approved third-party equipment or systems

3. Customer obligations

3.1 The Customer shall co-operate with all the reasonable instructions of Imetrum in its performance of the Contract and shall provide such assistance to Imetrum as they may reasonably require.

3.2 Adequate and appropriate access will be provided at the delivery address to facilitate the delivery of the Equipment.

3.3 The Customer will make available to Imetrum any information, instructions, documents, licences or authorisations required in order for Imetrum to deliver the Equipment and to make any due diligence checks.

3.4 The Customer warrants that it shall only use the Equipment for lawful purposes and the end use is not restricted by any UK Government trade sanctions, arms embargoes or other trade restrictions.

3.4.1 Any Equipment purchased from Imetrum will not be used for purposes associated with chemical, biological or nuclear weapons or missiles capable of delivering such weapons, nor will they be resold if we know or suspect that they are intended or likely to be used for such a purpose.

3.4.2 Any Equipment purchased from Imetrum will not be re-exported or otherwise re-sold or transferred to a destination subject to any UK, UN, or OSCE embargo where that act would be in breach of the terms of that embargo.

3.4.3 Any Equipment purchased from Imetrum, or any replica of them, will not be used in any nuclear explosive activity or unsafeguarded nuclear fuel cycle.

3.4.4 For sales to the countries listed in the UK Government Trade sanctions, arms embargoes, and other trade restrictions list (<https://www.gov.uk/guidance/current-arms-embargoes-and-other-restrictions>), orders will be subject to end user checks and export licences may need to be applied for.

3.5 The Customer shall indemnify and keep indemnified Imetrum against all and any actions, claims, demands, costs and expenses (including legal expenses and disbursements) incurred by or made against Imetrum in respect of any loss or damage or personal injury (including death) which arises out of or in connection with the Customer's failure to comply with Clause 3.4.

3.6 For the avoidance of doubt where the Customer fails to comply with its obligations under this Clause 3 Imetrum shall be entitled to delay the delivery of the Equipment without liability until the Customer so complies.

3.7 The customer shall disclose when purchasing Equipment if they intend to use with non-approved third-party equipment or systems (see terms under 2.9)

4. Payment

4.1 Subject to any price and payment terms set out in Imetrum's offer, the Customer shall pay the price of the Equipment as it appears in Imetrum's published price list by bank transfer to the bank account identified on Imetrum's invoice so that Imetrum receives the price in full in cleared funds within 30 days of the date of its invoice.

4.2 Imetrum may at any time insist on receiving 30% payment at the point of placing an order for Equipment.

4.3 Imetrum may at any time insist on receiving the price in full in cleared funds before delivering the Equipment if it has any reasonable grounds for suspecting that the Customer may not pay, or be able to pay, any part of the price, or for new customers purchasing Equipment for the first time.

4.4 If Imetrum has not received any monies which are due to it in cleared funds on or before the day they become payable, it may do all or any of the following:

- (i) Charge daily interest on those monies, both before and after any judgement, at the annual rate of 5% above the base lending rate from time to time of Lloyds TSB Bank until they have been received in cleared funds;
- (ii) Appropriate any monies which have been received from the Customer to payment in whole or in part for any of the Equipment;
- (iii) Suspend performance of the Contract in whole or in part until those monies have been received in cleared funds;
- (iv) Suspend shipment of any future orders for Equipment until any monies owed have been received in cleared funds;
- (v) Terminate the Contract.

And at Imetrum's request the Customer shall package the Equipment in a safe and secure manner, mark it clearly with Imetrum's name and address and, at Imetrum's option, either return it to Imetrum (completing relevant export documentation as instructed by Imetrum) or make it available for collection by Imetrum or its agent from the Customer's premises during normal office hours.

4.5 If the Contract is terminated for any reason, all monies due to Imetrum under it become payable immediately.

5. Warranties

(see separate Imetrum Warranty document)

6. Intellectual property rights

All intellectual property rights in the Equipment belong to Imetrum. Imetrum grants no rights, licences or permissions regarding those intellectual property rights other than those expressly conferred by these Imetrum Terms and the End User Licence.

7. Confidentiality

7.1 If a party acquires any Confidential Information, it shall keep that information confidential and use it only in furtherance of the Contract, except that it may disclose it:

- (i) In accordance with its legal obligations (other than purely Contractual ones);
- (ii) In confidence to its professional lawyers for the purpose of obtaining legal advice; and
- (iii) In confidence to its staff who are concerned with the implementation of the Contract, but only to the extent that they need the information for that purpose and only after they have given a binding undertaking to keep it confidential and to use it only for that purpose.

7.2 Clause 7.1 does not prevent a party from using Confidential Information:

- (i) In any way after the information has ceased to be confidential (unless it ceased to be confidential as a consequence of its breach of these Imetrum Terms); or
- (ii) In a particular way and for a particular purpose after it has acquired the same information, together with the right to use it in that way for that purpose, otherwise than in connection with the Contract.

8. Limitation of liability

8.1 Imetrum and the Customer will not be liable to each other for indirect or consequential loss or damage.

8.2 Imetrum will not be liable for any loss of revenue, profit or expected savings.

8.3 Imetrum will not be liable for any loss of, or damage to, goodwill or reputation.

8.4 Imetrum will not be liable for any loss of, or damage to, any data or computer program which would have been avoided if the Customer had made backups of them twice each day.

8.5 Provided Imetrum takes reasonable precautions to exclude from the Equipment any software which is maliciously intended to corrupt, destroy or impair the performance of the Equipment or any other hardware, software or data, it will not be liable for any loss or damage caused by such software.

8.6 Imetrum will not be liable for any loss, damage, expenses or costs which the Customer suffers or incurs in connection with any claims or proceedings brought against the Customer by any third party, except as described in Clause 9.3.

8.7 Imetrum's total aggregate liability to the Customer in respect of non-delivery or late delivery of any of the Equipment will not exceed the lower of: (i) the price of that Equipment; and (ii) the difference between that price and the price the Customer has to pay to buy equivalent equipment from a third party.

8.8 Imetrum's total aggregate liability to the Customer in respect of all loss, damage, expenses and costs suffered or incurred by the Customer as a result of any

misrepresentation or misstatement, Imetrum's breach of the Contract, and any defect in the Equipment, will not exceed the total charges payable under the Contract or £50,000, whichever is higher.

8.9 The exclusions and restrictions of liability set out in this clause cover liability on any basis, even if the loss, damage, expenses or costs concerned are of a kind which would arise in the ordinary course of things or are otherwise reasonably foreseeable or to be expected in the circumstances, and however they might arise, even if they result from Imetrum's negligence or from other negligence for which Imetrum would otherwise be liable.

8.10 As special exceptions to this clause, Imetrum does not exclude or restrict its liability for fraud, fraudulent misrepresentation, any breach of any terms which may be implied by s.12 of the Sale of Goods Act 1979, or any personal injury resulting from negligence.

9. Third party claims

9.1 If the Customer becomes aware of an actual or potential Third-Party Claim, it shall:

- (i) Notify Imetrum straight away;
- (ii) Forward all relevant information and documents to Imetrum straight away;
- (iii) Refrain from making, offering or accepting any admission, compromise or settlement in connection with the claim without Imetrum's written permission;
- (iv) Refrain from taking any steps in relation to the claim or any related litigation or negotiations;
- (v) Allow Imetrum to conduct all related litigation and negotiations and to settle the claim if Imetrum wishes to;
- (vi) Give Imetrum all the assistance it reasonably asks for in connection with the claim and any related litigation, negotiations and settlements.

9.2 Imetrum has the right to conduct and settle all negotiations and litigation arising from a Third- Party Claim in any way it wishes, and for these purposes Imetrum may bring or defend any claims and proceedings in the Customer's name.

9.3 Provided the Customer has complied with clause 9.1, and continues to do so, Imetrum shall reimburse the Customer for any damages and costs finally awarded against it by a court of England and Wales in connection with a Third-Party Claim. For these purposes, damages and costs have been finally awarded when neither Imetrum nor the Customer is able to appeal any aspect of the award.

10. Intervening events

10.1 Imetrum will not be in breach of the Contract, or liable to the Customer in any way at all, if it fails to perform its obligations under the Contract, or is late doing so, to the extent the failure or delay is the result of a cause beyond its reasonable control.

10.2 If Imetrum is prevented from delivering any Equipment in circumstances which are covered by clause 10.1, then unless the Customer is wholly or partly responsible, the Customer will be relieved from its obligation to pay for it and Imetrum will repay any monies which the Customer has already paid for it.

11. Termination

If the Customer breaches the Contract in any way, Imetrum may, at its option, terminate the Contract in respect of all or any instalments.

12. General provisions

- 12.1 The Customer shall pay all monies due under the Contract in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 12.2 Imetrum may assign any right, benefit or interest in or arising out of the Contract to any person, or hold any of these on trust for any person, but the Customer may not and shall not do any of these things.
- 12.3 Except where it expressly says otherwise, the Contract does not confer on any third party any right to enforce any of its terms, and the parties are entitled to exercise their right (if any) to rescind, end or vary the Contract without any third party's consent and without informing any third party.
- 12.4 Neither party will be bound by a variation or waiver of the Contract unless the variation or waiver has been signed by a director of Imetrum.
- 12.5 A party which fails to exercise a right or remedy, either promptly or at all, does not waive that or any other right or remedy, and the other party shall not claim that it has or that the failure has varied the Contract or is evidence of such a variation.
- 12.6 If a court with jurisdiction decides that a provision of the Contract is invalid, void, unenforceable or illegal, the remainder of the Contract will apply as if that provision had never been included.
- 12.7 English law applies to the Contract and the English courts have exclusive jurisdiction over any claim or dispute concerning, or arising out of, the Contract or the Equipment.

13. Interpretation

The following words and phrases have the following meanings:

Contract: the binding agreement formed by Imetrum's acceptance of the Customer's order, or the Customer's acceptance of Imetrum's offer to supply, as the case may be.

Confidential Information: information is Confidential Information in the hands of a party if that party acquires it in connection with the Contract, it is confidential when it is acquired, and that party ought reasonably to have appreciated that it is confidential. This applies equally to information acquired before the Contract.

End User Licence: the written licence granted to the Customer by Imetrum to enable it to use the software components of the Equipment. The terms of the licence may be viewed on Imetrum's support portal at support.imetrum.com

Equipment: the hardware and software which is the subject matter of the Contract, together with any instructions provided to the Customer.

Imetrum Terms: these written terms and conditions of supply, as amended by any agreed variations which have been signed by a director of Imetrum.

Including and in particular: these are used to identify specific examples and do not qualify or restrict the scope of any term in any way at all.

Intellectual Property Rights: rights in inventions, patents, copyrights, database rights, design rights, trade secrets, know-how, obligations of confidence, trademarks, rights in performances,

and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the registration of any of these anywhere in the world.

Shall: denotes an obligation.

Specification: the written specification of the Equipment appearing on Imetrum's website at the time the Contract is made, together with any other specification which Imetrum has communicated to the Customer in writing before the Contract.

Third Party Claim: a claim by a third party that the Customer's possession or use of the Equipment in accordance with the Contract and the End User Licence infringes the UK copyright, UK database rights or UK registered trade mark of that third party, or is a breach of a confidence which Imetrum owes to that third party.

Variation: includes an addition

References to **Imetrum** and the **Customer** include their permitted successors and assigns.

References to **statutory provisions** include those provisions as amended or re-enacted before the Contract.

One **gender** includes all genders, the singular includes the plural, and the plural includes the singular.