



MOTION IMPOSSIBLE

TERMS AND CONDITIONS (SERVICES)

1. INTERPRETATION

1.1 Definitions:

Additional Fee: the amount payable by the Customer to Motion Impossible for the Additional Services.

Additional Services: any additional services not included in the original Specification agreed in writing by Motion Impossible and the Customer.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.5.

Contract: the contract between Motion Impossible and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person, company, organisation or firm who purchases Services from Motion Impossible.

Customer Default : has the meaning set out in clause 4.2.

Deposit: the sum payable before commencement of the Services or the Maintenance Services as set out in the Specification or otherwise agreed.

Excluded Causes: means:

- (a) any maintenance, alteration, modification or adjustment performed by persons other than Motion Impossible or its employees or agents;
- (b) the neglect or misuse of the Goods.

Extended Warranty: a warranty against defects in the Goods excluding defects caused by one of the Excluded Causes.

Extended Warranty Period: the period of the warranty agreed by the parties and subject to payment of the appropriate fee.

Goods: any goods provided by Motion Impossible to the Customer.

Good Working Order: the Goods operate in accordance with the Operating Manuals.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights in any jurisdiction.

Motion Impossible: means Motion Impossible Limited, a company incorporated and registered in England and Wales with company number 09422280 whose registered office is at Unit C5 Backfield Farm Business Park, Wotton Road, Iron Acton, Bristol BS37 9XD.



Maintenance Services: the repair and maintenance services supplied by Motion Impossible to the Customer either under an Extended Warranty or on a paid for basis.

Operating Manuals: all operating manuals, specifications and other documentation relating to the Goods.

Order: the Customer's order for Services as set out in the Customer's purchase order form or the Customer's acceptance of a quotation by Motion Impossible, as the case may be.

Services: the services supplied by Motion Impossible to the Customer as set out in the Specification (excluding the Maintenance Services).

Specification: the description or specification of the Services and/or the Maintenance Services provided in writing by Motion Impossible to the Customer.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) 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.
- (c) A reference to **writing** or **written** includes email.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Motion Impossible has accepted the Order and the Customer has paid the Deposit (unless otherwise agreed in writing) at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Motion Impossible, and any descriptions or illustrations contained on Motion Impossible's website, are published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given shall not constitute an offer, and is only valid for a period of 14 Business Days from its date of issue.



3. SUPPLY OF SERVICES

- 3.1 Motion Impossible shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 Motion Impossible shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 Motion Impossible shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and shall notify the Customer in any such event.
- 3.4 Motion Impossible warrants to the Customer that the Services will be provided using reasonable care and skill.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - (b) co-operate with Motion Impossible in all matters relating to the Services;
 - (c) provide Motion Impossible with such information and materials as Motion Impossible may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - (d) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
 - (e) comply with any additional obligations as set out in the Specification.
 - (f) obtain, pay for and maintain with a reputable insurance company reasonably acceptable to Motion Impossible during the continuance of the Contract policies of insurance in such amounts and against such risks on a prudent person carrying on the same activities as the Customer would carry on and shall provide Motion Impossible with proof of such policies of insurance on demand.
- 4.2 If Motion Impossible's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) Motion Impossible shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the



Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Motion Impossible's performance of any of its obligations;

- (b) Motion Impossible shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Motion Impossible's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse Motion Impossible on written demand for any costs or losses sustained or incurred by Motion Impossible arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

5.1 Clause 5.2 shall apply if the Services are to be provided on a time-and-materials basis. Clause 5.3 and clause 5.4 shall apply if the Services are to be provided for a fixed price. The remainder of this clause 5 shall apply in either case.

5.2 Where the Services are provided on a time-and-materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with Motion Impossible's standard daily fee rates as amended from time to time;
- (b) Motion Impossible's standard daily fee rates (as published from time to time) are calculated on the basis of an ten-hour day worked on weekdays (including weekends and public holidays);
- (c) Motion Impossible shall be entitled to charge it's standard daily fee rate (as published from time to time) plus 20% for each hour worked outside the hours referred to in clause 5.2(b) on a pro-rata basis;
- (d) Motion Impossible shall invoice the Customer after completion monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 5. Each invoice shall set out the time spent and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

5.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Specification. The Deposit shall be paid on completion on acceptance of an Order and before any Services are carried out. The remainder shall be payable on completion of the Services in accordance with clause 5.5 (unless agreed otherwise in writing). All amounts due under the Contract shall be paid by the Customer to Motion Impossible in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). Motion Impossible shall invoice the Customer for the charges at each relevant stage, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in clause 5.4.

5.4 Any fixed price contained in the Specification excludes:



- (a) the cost of hotel, subsistence, travelling, per diem and any other ancillary expenses reasonably incurred by Motion Impossible in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by Motion Impossible for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Motion Impossible at cost; and
 - (b) VAT, which Motion Impossible shall add to its invoices at the appropriate rate.
- 5.5 The Customer shall pay each invoice submitted to it by Motion Impossible in full, and in cleared funds, within 14 days of receipt.
- 5.6 Without prejudice to any other right or remedy that Motion Impossible may have, if the Customer fails to pay on the due date or any payment is dishonoured or cancelled Motion Impossible may:
- (a) recover any and all bank charges and ancillary expenses incurred;
 - (b) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
 - (c) suspend all Services until payment has been made in full.
- 5.7 The Customer must ensure that any bank charges associated with an electronic payment are paid by the Customer and are not deducted from the invoice amount.
- 5.8 Time for payment shall be of the essence of the Contract.
- 5.9 Motion Impossible may, without prejudice to any other rights it may have, set off any liability of the Customer to Motion Impossible against any liability of Motion Impossible to the Customer.
- 6. ADDITIONAL SERVICES**
- 6.1 Motion Impossible will notify the Customer as soon as reasonably practicable if it becomes apparent that Additional Services are likely to be required, identifying the required services.
- 6.2 Motion Impossible will perform any Additional Services on receipt of a written instruction to do so by the Customer.
- 6.3 As soon as reasonably practicable after receiving an instruction to perform an Additional Service, Motion Impossible will provide the Customer with a written estimate of cost of the Additional Services.



6.4 Unless the parties agree otherwise, the Additional Fee shall be a reasonable amount calculated by reference to Motion Impossible's time charges (as amended from time to time), provided that no Additional Fee shall be payable if the requirement for Additional Services arises from Motion Impossible's default or negligence.

6.5 Any Additional Fee payable by the Customer will be included in the next invoice following performance of the Additional Service to which it relates.

6.6 Time for payment shall be of the essence of the Contract.

7. SUPPLY OF MAINTENANCE SERVICES

7.1 During the Extended Warranty Period, Motion Impossible shall at its option, repair or replace the defective Goods free of charge.

7.2 Motion Impossible will provide the Customer with the Maintenance Services for the Goods not subject to an Extended Warranty (or where the defect is as a result of an Excluded Cause) on request subject to payment of the charges agreed by the parties.

7.3 On the Customer informing Motion Impossible that the Goods are malfunctioning or have failed or are otherwise not in Good Working Order, the Customer shall arrange for the Goods to be delivered to Motion Impossible's premises for performance of the Maintenance Services. Once the Goods have been repaired, the Customer shall arrange for the prompt collection of the Goods and shall be responsible for all packaging, delivery and shipping charges.

7.4 In performing the Maintenance Services, Motion Impossible shall use all reasonable endeavours to restore any malfunctioning or failed Goods to Good Working Order.

7.5 In performing the Maintenance Services, Motion Impossible shall use all reasonable endeavours to source spare parts required to restore the Goods to Good Working Order.

7.6 All spare parts and/or replacements provided by Motion Impossible to the Customer shall become part of the Goods and the property of the Customer. All parts and components removed from the Goods by Motion Impossible in the course of performing the Maintenance Services will be the property of Motion Impossible.

7.7 The charges for the Maintenance Services outside of an Extended Warranty or due to an Excluded Cause shall be the fixed price agreed by the parties prior to delivery of the Goods to Motion Impossible's premises. The fixed price shall be paid in two equal instalments. The first instalment shall be paid by the Customer prior to delivery of the Goods to Motion Impossible's premises and the second instalment shall be paid on completion of the Maintenance Services prior to return of the Goods to the Customer.

7.8 Any fixed price agreed for the Maintenance Services excludes the cost of any ancillary expenses reasonably incurred by Motion Impossible in connection with the Maintenance Services, and the cost of any materials or services reasonably and properly provided by third parties required by Motion Impossible for the supply of the



Maintenance Services. Such expenses, materials and third party services shall be invoiced by Motion Impossible at cost and shall be added to the final invoice.

7.9 If a defect is caused by an Excluded Cause, the Customer shall be responsible for the costs of the Maintenance Services together with all costs and charges of packing, insurance, transport and delivery to and from Motion Impossible's premises.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Motion Impossible.

8.2 Unless agreed otherwise, the Customer grants to Motion Impossible, an irrevocable, non-exclusive, non-terminable, royalty-free licence to use any details of the Services provided for the purposes of self-promotion and marketing including but not limited to including details of the Services provided on Motion Impossible's website.

9. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

9.1 Nothing in the Contract shall limit or exclude Motion Impossible's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot be limited or excluded by applicable law.

9.2 Subject to clause 9.1, Motion Impossible shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of damage to goodwill; and
- (g) any indirect or consequential loss.

9.3 Subject to clause 9.1, Motion Impossible's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the total Charges paid under the Contract.



9.4 This clause 9 shall survive termination of the Contract.

10. TERMINATION

10.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 7 days' written notice.

10.2 If the Customer terminates the Contract within 7 days of the Services' start date, the Contract will end immediately and Motion Impossible will refund any sums paid by the Customer for Services not provided but will deduct from that refund (or, if the Customer has not made an advance payment, charge the Customer) reasonable compensation for the net costs Motion Impossible will incur as a result of the Customer ending the contract (including but not limited to the full value of the Deposit).

10.3 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10.4 Without limiting its other rights or remedies, Motion Impossible may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 7 days after being notified to make such payment.

11. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Motion Impossible all of its outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Motion Impossible shall submit an invoice, which shall be payable by the Customer immediately on receipt;



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- (b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (c) clauses which expressly or by implication survive termination shall continue in full force and effect.

12. GENERAL

12.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

12.2 Assignment and other dealings.

- (a) Motion Impossible may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of Motion Impossible, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

12.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12.4 **Entire agreement.** This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12.5 **Variation.** Motion Impossible may revise these terms and conditions at any time and shall notify the Customer in any such event.

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- 12.6 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 12.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.
- 12.8 **Notices.**
- (a) Any notice given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or sent by fax to its main fax number.
 - (b) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include email.
- 12.9 **Third parties.** No one other than a party to the Contract shall have any right to enforce any of its terms.
- 12.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 12.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.