

**TRUMPF**



# Terms & Conditions for the Supply of Services

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## Terms & Conditions for the Supply of Services by TRUMPF Ltd.

### 1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

- (a) **Business Day:** a day (other than a Saturday, Sunday, public holiday or Christmas week shutdown) when banks in London are open for business.
- (b) **Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 7 and as set out in the Quotation.
- (c) **Commencement Date:** has the meaning set out in clause 2.3.
- (d) **Conditions:** these terms and conditions as amended from time to time in accordance with clause 18.7.
- (e) **Contract:** the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.
- (f) **Customer:** the person or firm who purchases Services from the Supplier.
- (g) **Intellectual Property Rights:** copyright, trademarks, patents, rights in designs, know-how, confidential information and any other intellectual property rights arising anywhere in the world, whether registered or unregistered.
- (h) **Machine:** a machine which is the subject of a Contract or Service visit.
- (i) **Maintenance Visit:** an on-site visit by the Supplier's engineer to provide preventative maintenance.
- (j) **Quotation:** the Supplier's written quotation for the Services.
- (k) **Remote Support:** remote diagnostic support from the Supplier's engineers for Machines and Software.
- (l) **Services:** the support, maintenance and repair services that the Supplier has agreed to supply to the Customer in accordance with the Quotation which may consist of any of the following service contracts (specification as set out on page 10)

**Remote:** Telephone and Internet connection to machine support

**Maintenance:** Remote & maintenance visit, discounted repair visits

**Inclusive:** Maintenance & Repair visits

**Extended Warranty:** Repair & parts warranty

**Hourly invoiced work:** Diagnosis, repair, maintenance, application support

**Software Support:** Licence, updates, remote support

- (m) **Service Visit:** an on-site visit by the Supplier's engineer to provide diagnostic work or repairs.
- (n) **Software:** software that has been supplied to the Customer by the Supplier under a licence and which is the subject of a Contract.
- (o) **Specification:** the specification for the Services as set out at the end of these Conditions.
- (p) **Supplier:** TRUMPF Limited registered in England and Wales with company number 01160907.
- (q) **Telephone Support:** telephone support from the Supplier's engineers for Machines and Software.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision 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;
- (d) 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; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

### 2. BASIS OF CONTRACT

- 2.1 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.
- 2.2 A purchase order by a Customer constitutes an offer by the Customer to purchase Services in accordance with the Quotation and these Conditions.
- 2.3 An order shall only be deemed to be accepted when the Supplier issues a written order acceptance (this may be sent by email) at which point and on which date the Contract shall come into existence (**Commencement Date**).

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- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 Any descriptions of the Services issued by the Supplier or contained in the Supplier's brochures 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.
- 2.6 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.
- 2.7 Any Quotation shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.

### 3. TERM AND RENEWAL

The Contract will start on the Commencement Date and continue for a period of 12 months (**Contract Period**). It will automatically renew on the anniversary of each Commencement Date for a further period of 12 months unless terminated by either party giving at least 2 months' notice (such notice to expire on the anniversary of the Commencement Date in accordance with clause 15.1) or otherwise in accordance with clause 15.

### 4. SUPPLY OF SERVICES

- 4.1 The Supplier offers Services consisting of **Remote, Maintenance, Inclusive, Extended Warranty, Hourly invoiced** and/or **Software Support**, all as described in the Specification. The Quotation shall set out the particular Services that the Supplier has agreed to supply to the Customer under the Contract.
- 4.2 The Supplier shall supply the Services to the Customer in accordance with the Specification for those Services in all material respects.
- 4.3 The Supplier shall use reasonable endeavours to meet the following obligations:
- Remote Support** for Machines shall be available between the hours of 8am and 6pm on Business Days;
  - Software Support** shall be available between the hours of 8.30am and 5.30pm Monday to Thursday and between 8.30am and 4.30pm on Fridays (except bank holidays);
  - where the Services include Service Visits, the Supplier's engineer will endeavour to attend the Customer's premises within 24 hours of the Supplier being notified that there is a fault which requires a Service Visit.
- 4.4 The response times set out in clause 4.3 shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.5 Where a fault is reported in relation to a Machine or Software, the Supplier will use reasonable endeavours to locate and rectify the fault by Telephone Support or Remote Support.
- 4.6 Remote Support for Machines shall be provided by the Supplier's engineer connecting remotely with the Machine via PC Anywhere, a remote viewer or Network TelePresence. This is only available where the Machine control has been fitted with an integral modem or MGuard network card and is conditional on the Customer maintaining its telephone line and internal network.
- 4.7 Maintenance Visits and Service Visits shall be provided on Business Days. If the Customer requires the Supplier's engineer to work greater than eight hours, such work will be deemed to be an Additional Service (as defined in clause 7.3) and chargeable at the Supplier's overtime rate.
- 4.8 Work carried out on Maintenance Visits shall be in accordance with the Supplier's maintenance checklist for each Machine. Any work that is required which is outside the scope of this checklist shall be treated as an Additional Service (as defined in clause 7.23) and chargeable by the Supplier.
- 4.9 The Supplier will contact the Customer 4-6 weeks in advance of any Maintenance Visits to arrange the date of such visit.
- 4.10 A Service Visit consists of the time that is necessary to diagnose and rectify a specified fault (subject to clause 4.12). Any follow up visit to deal with the same fault must be within one month of a Service Visit in relation to the same fault otherwise it will be deemed by the Supplier to be a new Service Visit.
- 4.11 The following items shall be included in the Services, depending upon contract level purchased
- Remote Support** shall include the cost of the engineer's time in providing telephone support and internet diagnostic services;
  - Maintenance** shall include all travel, accommodation and subsistence expenses for the Supplier's engineer to perform Maintenance;
  - Inclusive** shall include all travel, accommodation and subsistence expenses for

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the Supplier's engineer to perform repairs, excluding malicious and wilful neglect of machine(s)

- (d) **Extended warranty** shall include spare parts, excluding wearing parts and consumables, intentional damage;
- 4.12 The Supplier shall supply the Services subject to the Supplier's maximum usage limits set out below and any Services requested by the Customer above these limits shall be chargeable as an Additional Service under clause 7.2:
- (a) **Remote Support** shall be provided up to a maximum duration of 1 hour per telephone call, 2 hours for internet diagnostics;
- (b) **Remote Support** shall be provided up to a maximum total of 20 hours per calendar quarter per Contract;
- (c) **Inclusive contract**, Service Visits shall be provided up to a maximum 80 hours for each Machine per Contract Period.
- 4.13 The usage limits set out in clause 4.12 may be varied by the written agreement of the Supplier and the Customer.
- 4.14 **Hourly invoiced**, Service Visits shall include an estimated quotation, the final invoice superseded the quotation, unless stipulated.
- 4.15 The Supplier 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 the Supplier shall notify the Customer in any such event.
- 4.16 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 4.17 The Supplier shall have no obligation to provide the Services where faults arise from:
- (a) misuse, failure to follow the Supplier's oral or written instructions as to use, or wilful damage to the Machine or Software by the Customer;
- (b) use of the Machine or Software in combination with any equipment or software which has not been provided or designated by the Supplier as being suitable; or
- (c) any alteration, repair or modification of the Machine or Software which has not been carried out or authorised by the Supplier.

Any repairs which the Supplier agrees to carry out in the circumstances set out in clauses 4.17(a)-(c) shall be chargeable as Additional Services under clause 7.3.

4.18 The Supplier shall have no obligation to provide technical assistance to the Customer for issues which relate to the normal operating procedure of a Machine (where instructions how to resolve this issue have already been communicated to the Customer or are contained within the operating manual or instructions for the Machine) or issues which the Customer should reasonably be expected to know how to resolve itself.

4.19 All work to be carried out under this Contract must be performed by the Supplier or its authorised representative. The Customer is not entitled to arrange for any third party to carry out any work which is the subject of the Services and invoice the Supplier for such work.

### 5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services and follow any recommendations made by the Supplier in relation to repairs that need to be undertaken to any Machine;
- (b) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (c) for **Remote Support**, provide and maintain a direct analogue telephone line or other suitable remote access to the control of the relevant Machine or to the equipment on which the Software is being used to allow the Supplier's engineers to remotely connect to the Machine or Software;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (e) take into account that any Machine which requires a Maintenance Visit or a Service Visit will not be operable whilst such repairs or maintenance are being carried out;
- (f) prepare its premises for the supply of the Services in compliance with all applicable law and regulations regarding health and safety, including ensuring that the Supplier's engineer has safe and unrestricted access to the relevant Machine, and there are no obstructions in the area of the Machine. If the Supplier's engineer is required to work at height (for example, servicing or maintenance of automated storage systems), the Customer

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will, at its own expense provide a mobile elevated working platform and will at all times comply with the Working at Height Regulations 2005. In the event that the Customer does not provide a mobile elevated working platform or does not comply with any aspect of the Working at Height Regulations 2005, the Supplier's engineer shall not provide the Services;

- (g) ensure that any Machine requiring repairs or maintenance has been cleaned by the Customer before the Supplier's engineer arrives on site. For the avoidance of doubt, cleaning the Machine does not form part of the Services and is the responsibility of the Customer;
  - (h) obtain and maintain all necessary licences, permissions and consents which may be required before the Services start;
  - (i) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 5.2 If the Supplier'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) the Supplier 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 the Supplier's performance of any of its obligations;
  - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 5.2; and
  - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

### 6. SOFTWARE SUPPORT AND UPDATES

6.1 The Customer warrants that it meets the following conditions in order to be eligible for Software Support:

- (a) the Customer possesses a valid licence issued by the Supplier for the Software; and
- (b) the Customer's hardware and software configuration meets the minimum requirements that apply to the Software as detailed in system requirements document (as may be varied from time to time in respect of any latest version or update) or as notified by the Supplier.

6.2 If the Services include Software Support, the Supplier shall provide Software Support in accordance with clause 4.

6.3 The Supplier will only provide support in relation to the Software and takes no responsibility for any third-party hardware or software or the integrity of the system on which the Customer is using the Software.

6.4 The Supplier will use reasonable endeavours to correct errors which are reported by the Customer by way of a fix, patch or temporary work around solution or other means at the discretion of the Supplier.

6.5 The Supplier may issue Software updates to the Customer as and when required and in a data media form of the Supplier's choosing, at the absolute discretion of the Supplier. The Supplier shall supply updates to the Customer together with any necessary installation instructions. Updates may include corrections, improvements or functional upgrades to the Software.

6.6 If a Software update requires any changes to the Customer's hardware and/or software configuration, the Supplier will notify the Customer of the changes to enable the Customer to make such changes and purchase any necessary software or hardware items.

6.7 The Customer is responsible for installation of updates in accordance with any installation instructions supplied. If the Customer fails to install any update within 1 month of the Supplier making it available to the Customer, the Supplier may terminate this Contract in accordance with clause 15.5.

### 7. CHARGES AND PAYMENT

7.1 The Charges for the Services shall be as set out in the Quotation or as notified by the Supplier to the Customer under clause 7.4.

7.2 For Customers based in Ireland, the Charges do not include any costs of travel (which may include the costs of flights, car hire and taxis), hotels or subsistence which are incurred by the Supplier's engineer in providing the Services. Such costs shall additionally be payable by the Customer and the Supplier may invoice the

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Customer for such costs in accordance with clause 7.8.

- 7.3 The charges for any additional services requested by the Customer which fall outside the scope of the Services (**Additional Services**) shall be on a time and materials basis as follows:
- (a) the charges for any Additional Services shall be calculated in accordance with the Supplier's standard daily fee rates which the Supplier shall notify to the Customer on request;
  - (b) the Supplier's standard daily fee rates are calculated on the basis that the work is carried out during Business Days;
  - (c) the Supplier shall be entitled to charge overtime for any time worked by individuals whom it engages on Additional Services outside the hours referred to in clause 7.3(b); and
  - (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Additional Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Additional Services, and for the cost of any spare parts and consumables.
- 7.4 The Supplier reserves the right to increase the Charges for any subsequent Contract Period by the prevailing rate of CPI, provided that such charges will not be increased more than once in any Contract Period. The Supplier will give the Customer written notice of any increase greater than the prevailing CPI rate a minimum of 2 months before any anniversary of the Commencement Date where. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 20 Business Days of the date of the Supplier's notice and the Supplier shall have the right, without limiting its other rights or remedies, to terminate the Contract in accordance with clause 15.2.
- 7.5 The Customer may pay the Charges annually or in monthly instalments payable by direct debit, as agreed between the Supplier and the Customer.
- 7.6 If the Customer has agreed to pay the Charges annually, the Supplier shall invoice the Customer for the Charges and the Customer shall pay the invoice within 30 days of the date of the invoice in full and cleared funds to a bank account nominated in writing by the Supplier.
- 7.7 If the Customer has agreed to pay the Charges in instalments, the Supplier shall invoice the Customer for the Charges and the invoice shall set out the amount and due date for each instalment payment. The Customer shall pay each instalment on or by its due date by direct debit in full and cleared funds to a bank account nominated in writing by the Supplier.
- 7.8 The Supplier shall invoice the Customer for all other amounts which are or may become payable under the Contract and the Customer shall pay any such invoice within 30 days of the date of the invoice in full and cleared funds to a bank account nominated in writing by the Supplier.
- 7.9 Time for payment shall be of the essence of the Contract.
- 7.10 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services. Where the Customer has agreed to pay the Charges in instalments, the first instalment will include the VAT for the entire Contract.
- 7.11 If the Customer fails to make any payment due to the Supplier under the Contract by its due date, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.12 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

### **8. MACHINE INSPECTION**

- 8.1 If a Customer wishes to enter into a Contract after the expiry of the warranty period of any Machine, the Supplier has the right to require that an engineer of the Supplier inspects the

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Machine before the Contract comes into existence.

8.2 In the event that the Contract terminates for any reason and the Customer subsequently wishes to:

- (a) renew the Contract with the prior agreement of the Supplier; or
- (b) Enter into a new Contract in relation to a Machine that was previously the subject of a Contract,
- (c) The Supplier reserves the right to require that an engineer of the Supplier inspects the Machine before a new Contract comes into existence.

8.3 The Supplier shall be entitled to invoice the Customer for any inspection under clause 8.1 or 8.2 at its standard rates in accordance with clause 7.8.

### 9. REPAIRS

9.1 If, following an inspection under clause 8.1 or 8.2, the Supplier's engineer is of the opinion that repairs need to be undertaken to a Machine, the Supplier will notify the Customer of the repairs that are necessary. The Supplier will not accept a Contract for that Machine until the Customer has authorised the Supplier to carry out such repairs and agreed to pay for the repairs together with any necessary spare parts at the Supplier's standard rates.

9.2 If, following any Maintenance Visit or Service Visit, the Supplier's engineer is of the opinion that repairs need to be undertaken to a Machine, the Supplier will notify the Customer of the repairs that are necessary. The Customer shall authorise the Supplier to carry out such repairs and agree to pay for the repairs and any necessary spare parts as Additional Charges. If the Customer does not authorise and agree to pay for such repairs, the Supplier shall be entitled to terminate the Contract in accordance with clause 15.5.

9.3 The Supplier shall be entitled to invoice the Customer for any repairs carried out under clauses 9.1 or 9.2 at its standard rates in accordance with clause 7.8.

### 10. SPARE PARTS

10.1 Other than for **Extended Warranty** Contracts, the Services do not include the supply of any spare or replacement parts which are necessary to repair a Machine which is the subject of a Contract. All necessary spare parts shall be purchased from the Supplier and the Supplier shall invoice the Customer for such spare parts in accordance with clause 7.8.

10.2 The Supplier shall invoice the Customer for any spare parts, consumables or wearing parts at its standard prices less any discount to which the Customer is entitled. The Specification for the Services shall state any discount on spare parts to which the Customer is entitled.

10.3 The Supplier shall provide to the Customer a warranty (in accordance with the TRUMPF Ltd. **Terms and conditions for the supply of goods**) on any spare parts fitted which is equivalent to the warranty provided by the manufacturer of the spare part to the Supplier. This warranty on spare parts only applies to spare parts which are fitted by the Supplier or its authorised sub-contractor.

### 11. THIRD PARTY EQUIPMENT – EXTENDED WARRANTY ONLY

11.1 Where a Machine which is covered by Inclusive or Extended Warranty includes a component which has been manufactured by a third party, the Services will extend to such third-party components.

11.2 If there is a fault in such a third-party component, the Supplier may arrange (at its own cost) for the fault to be rectified by an engineer from that third party.

### 12. INTELLECTUAL PROPERTY RIGHTS

12.1 All Intellectual Property Rights in or arising out of or in connection with the provision of the Services (including any Software updates) shall be owned by the Supplier.

12.2 All Supplier Materials shall be the exclusive property of the Supplier.

### 13. CONFIDENTIALITY

The Customer undertakes that it shall treat as confidential and not, other than in the proper performance of its duties under this Contract, use or disclose to any person any Confidential Information belonging to the Supplier. **Confidential Information** shall include all technical or commercial know-how, specifications, inventions, processes and initiatives and all other confidential information including relating to the Supplier's business, customers, suppliers, products and services which has been disclosed to the Customer by the Supplier or its employees or agents.

### 14. LIMITATION OF LIABILITY

14.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or



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(b) fraud or fraudulent misrepresentation.

14.2 Subject to clause 14.1:

(a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

(b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total amount paid by the Customer in the most recent Contract Period.

14.3 The terms implied by sections 13 to 15 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

14.4 This clause 14 shall survive termination of the Contract.

### 15. TERMINATION

15.1 Without limiting its other rights or remedies, either party may terminate the Contract at the end of any Contract Period by giving the other party at least 2 months' prior written notice.

15.2 The Supplier may terminate the Contract at the end of any Contract Period by giving prior written notice to the Customer if the Customer has notified the Supplier under clause 7.4 that it does not accept an increase in the Charges for the subsequent Contract Period.

15.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer:

(a) if the Customer ceases to carry on its business, disposes of all or a substantial part of its business, becomes insolvent, has a receiver, liquidator, administrative receiver or similar officer appointed over its assets; or

(b) on the commencement of the winding up (other than for the purpose of a bona fide reconstruction or reorganisation whilst solvent), administration, formal arrangement with creditors or any analogous procedure of the Customer in any jurisdiction.

15.4 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all

outstanding amounts within 20 Business Days after being notified in writing to do so.

15.5 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to comply with its obligations under clauses 6.7 or 9.2.

15.6 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 15.3, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

### 16. CONSEQUENCES OF TERMINATION

16.1 On termination of the Contract for any reason:

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

(b) the Customer shall return all of the Supplier Materials and any spare parts or other materials which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

(c) 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

(d) clauses which expressly or by implication survive termination shall continue in full force and effect.

### 17. FORCE MAJEURE

17.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or



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governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

17.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

### 18. GENERAL

#### 18.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

#### 18.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 18.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, at 9am on the next Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

#### 18.3 Severance.

- (a) 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. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect

the validity and enforceability of the rest of the Contract.

- (b) If any provision or part-provision of this Contract is held invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

18.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

18.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

#### 18.7 Variation.

- (a) The Supplier reserves the right to amend these Conditions at any time by giving written notice to the Customer.
- (b) These Conditions may not otherwise be amended except with the written agreement of the Supplier.

18.8 **Governing law.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

18.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).



## Terms & Conditions for the Supply of Services by TRUMPF Ltd.

### SPECIFICATION OF SERVICES

	Remote	Maintenance	Inclusive <sup>1</sup>	Extended Warranty <sup>2</sup>	Software Support <sup>3</sup>
Telephone Support	✓	✓	✓	✓	✓
Remote Support <sup>4</sup>	✓	✓	✓	✓	✓
Maintenance Visits (number of visits as per quotation)		✓	✓	✓	
Unspecified number of Service Visits (up to 80 hrs per Machine per year)			✓	✓	
Cost of spare parts included (excluding wearing parts and consumables)				✓	
Spare Parts Discount	none	7.5%	17.5%	included	none
Wearing parts discount	none	5%	10%	10%	none
Consumables discount	none	none	5%	5%	none

<sup>1</sup> Inclusive is not available on machines over 10 years old, TRUMPF reserve the right to withdraw after year 10.

<sup>2</sup> Extended warranty is not available on machines over 5 years old.

<sup>3</sup> Software Support includes upgrades to the Software as available and access to the TRUMPF customer portal.

<sup>4</sup> Remote diagnostic support for machines is only available where the control has been fitted with an integral modem or MGuard network card.