

TERMS AND CONDITIONS ("Conditions")

THESE CONDITIONS apply to the supply of the System and the Services (as defined below) from Medaphor Limited (registered number 05176992) whose registered office is at Hodge House, 114-116 St Mary Street, Cardiff CF10 1DY and is trading as Intelligent Ultrasound Simulation ("INTELLIGENT ULTRASOUND") to the Customer (as defined below).

1 Definitions

In these Terms and Conditions the following expressions shall have the following meanings unless inconsistent with the context:

"Agreement"	the agreement between INTELLIGENT ULTRASOUND and the Customer for the supply of the System and the Services in accordance with these Conditions and the Purchase Order.
"Business Day"	any day other than a Saturday or Sunday or a public or bank holiday in England and Wales
"Business Hours"	the hours of 9.00am to 5.00pm inclusive UK time on any Business Day
"Consequential Loss"	pure economic loss, loss of profit, loss of business, depletion of goodwill, loss of anticipated savings and like loss
"Copy"	an individual copy on electromagnetic recording material of one or more of the programs constituting the Software
"Customer"	the person, partnership, company or other undertaking to whom the Sales Invoice is addressed
"Equipment"	the items of equipment supplied and specified on the Sales Invoice
"Initial Costs"	the System Purchase Price and that part of the Price for the first year in which the Software is licensed
"Intellectual Property Rights"	any and all patents, trademarks, trade names, service marks, copyright, moral rights, rights in design, rights in databases, know-how, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating thereto
"Loss of Data"	a loss of or corruption to data or programs held or used by or on behalf of the Customer
"Open Source Software"	the open source software incorporated either as a derivative or aggregated work with the System and which is provided to the Customer free of charge on an "as is" basis without warranty in any kind and otherwise under the relevant licence terms detailed in the file c:\medaphor\licence.txt if this is present on the system.
"Purchase Order"	INTELLIGENT ULTRASOUND's order form for the supply of the System
"Sales Invoice"	means the invoice for the supply of Systems (hardware and or software)
"Services"	the system maintenance services to be provided to the Customer by INTELLIGENT ULTRASOUND as specified in clause 10.1
"Site"	the Customer's premises as defined on the front of this invoice
"Software"	the computer software licensed to the Customer by INTELLIGENT ULTRASOUND under the Agreement and excluding, for the avoidance of doubt, the Open Source Software
"System"	together the Equipment and the Software
"System Purchase Price"	the price to be paid for the System as specified in the Sales Invoice
"Warranty Extension Fee"	the fee set by INTELLIGENT ULTRASOUND from time to time to extend the warranty period beyond that set out in clause 12.1 below.

2 Basis of the Agreement

- 2.1 These Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Purchase Order constitutes an offer by the Customer to purchase the System in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 The Purchase Order will be deemed to have accepted by INTELLIGENT ULTRASOUND on the earlier of:
 - 2.3.1 INTELLIGENT ULTRASOUND issuing written acceptance of the Purchase Order; or
 - 2.3.2 any act by INTELLIGENT ULTRASOUND consistent with fulfilling the Purchase Order, at which point and on which date the Agreement shall come into existence (the "**Commencement Date**").
- 2.4 Any samples, drawings or advertising produced by INTELLIGENT ULTRASOUND and any descriptions or illustrations contained in INTELLIGENT ULTRASOUND's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the System referred to in them. They shall not form part of the Agreement nor have any contractual force.

- 2.5 A quotation for the System given by INTELLIGENT ULTRASOUND shall not constitute an offer. A quotation shall only be valid for the period of time stated on the quotation.

3 COMPANY'S OBLIGATION

INTELLIGENT ULTRASOUND shall supply the System and the Services, at the System Purchase Price, at the Site subject to these Conditions.

- 3.1 The Customer shall within thirty (30) days of the date of invoice, pay for the System and Services.
- 3.2 If any sum payable under the Agreement is not paid when due then, without prejudice to INTELLIGENT ULTRASOUND's other rights under the Agreement, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at the interest rate prescribed in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
- 3.3 If the Customer fails to pay any monies on the due date or does not comply with an obligation imposed upon the Customer under the Agreement then, without prejudice to any other right or remedy available to INTELLIGENT ULTRASOUND, INTELLIGENT ULTRASOUND shall be entitled to:
- 3.3.1 withhold the supply of any Equipment, Software and/or Services to be provided to the Customer by or on behalf of INTELLIGENT ULTRASOUND until such payment is made;
- 3.3.2 suspend the performance of any other obligation owed by INTELLIGENT ULTRASOUND under the Agreement until such payment is made; and/or
- 3.3.3 require payment in full by the Customer for all the Equipment, Software and Services which the Customer has agreed to purchase under the Agreement before supplying the Equipment, Software and Services; and/or
- 3.3.4 terminate the Agreement under clause 15.1.1 or clause 15.1.2 as is appropriate in the circumstances.

4 CUSTOMER'S OBLIGATIONS AND RESTRICTIONS ON USE

The Customer shall:

- 4.1 purchase the System subject to these Conditions;
- 4.2 pay all sums, fees and other charges due under this Agreement upon the dates provided under these Conditions;
- 4.3 Implement any required upgrades to the System notified to it by INTELLIGENT ULTRASOUND within 30 days of such notification and where requested by INTELLIGENT ULTRASOUND allow INTELLIGENT ULTRASOUND's personnel access to the Site and the System to implement such upgrades; and
- 4.4 take all necessary precautions to protect the health and safety of INTELLIGENT ULTRASOUND's personnel whilst at the Site or any other location of the Customer.
- 4.5 THE CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SYSTEM:
- 4.5.1 IS PROVIDED FOR TEACHING PURPOSES ONLY;
- 4.5.2 MAY NOT BE USED IN DIAGNOSTIC AND TREATMENT PROCEDURES; AND
- 4.5.3 IS NOT OFFERED, SOLD, PROMOTED, OR TO BE USED FOR DIAGNOSIS, TREATMENT OR PROGNOSIS PURPOSES IN HUMANS.
- 4.6 THE CUSTOMER SHALL ENSURE THAT ANY USER OF THE SYSTEM (INCLUDING ANY MEDICAL PRACTITIONER) IS NOTIFIED OF THE RESTRICTIONS ON USE SET OUT IN CLAUSE 4.5 AND UNDERTAKES TO THE CUSTOMER TO USE THE SYSTEM STRICTLY IN ACCORDANCE WITH SUCH RESTRICTIONS.

5 SOFTWARE OWNERSHIP

- 5.1 The Customer acknowledges that all Intellectual Property Rights in or relating to the Software and all related documentation and all parts of the Software shall remain the exclusive property of INTELLIGENT ULTRASOUND or its licensors.

6 SOFTWARE LICENCE AND PAYMENT

- 6.1 Subject to payment by the Customer to INTELLIGENT ULTRASOUND of the System Purchase Price INTELLIGENT ULTRASOUND hereby grants to the Customer a non-exclusive, non-transferable licence to use the Software upon these Conditions.

7 SOFTWARE RESTRICTIONS

- 7.1 The licence hereby granted and the Customer's rights to use the Software are subject to the following restrictions:
- 7.1.1 the Software shall be used only by the Customer for the purposes of the Customer's own internal business at the Site or at such other location as INTELLIGENT ULTRASOUND may previously agree in writing;
- 7.1.2 the Software shall be used only on the Equipment;

- 7.1.3 the Customer shall not assign, sub-license, charge or otherwise dispose of or grant rights over or out of the licence hereby granted or the Software and shall not attempt to do any such thing;
- 7.1.4 the Customer shall not copy or reproduce in any way the whole or a part of the Software in machine or eye readable form, except that the Customer may maintain up to one (1) Copy of the Software in machine readable form for normal operational security and back-up purposes and this licence applies to such Copy as it applies to the original Copy of the Software supplied to the Customer. Such Copies and the media on which they are stored shall be the property of INTELLIGENT ULTRASOUND and the Customer shall ensure that all such Copies bear INTELLIGENT ULTRASOUND's proprietary notice;
- 7.1.5 the Customer shall not attempt to ascertain or list the source programs or source code relating to the Software;
- 7.1.6 the Customer shall not decompile or translate the Software into any other computer language nor attempt so to do, save to the extent permitted by law; and
- 7.1.7 the Customer shall not be entitled to maintain the Software itself, save to the extent permitted by law.
- 7.2 The Customer agrees not to use the Software or the associated documentation save in accordance with the Agreement.
- 7.3 Save as provided in clause 7.1.4 the Customer shall only use the single original Copy of the Software provided on the electromagnetic or optical recording material supplied by INTELLIGENT ULTRASOUND.
- 7.4 Notwithstanding clause 7.1.1 the Customer shall not, without the prior written consent of INTELLIGENT ULTRASOUND, use the Software as part of a computer bureau business or for a business which the Customer does not at the Commencement Date carry on.
- 7.5 The Customer shall not interfere with or attempt to circumvent the operation of any dongle or other device whose function is to prevent the unlawful copying or use of the Software.

8 SOFTWARE MODIFICATIONS

- 8.1 The Customer shall not modify, alter or in any way interfere with the Software or merge the Software with other data, programs or systems save to the extent permitted by law. Without prejudice to any other remedy of INTELLIGENT ULTRASOUND if the Customer (in breach of this clause) does modify, alter, interfere with or merge the Software no such modification, alteration, interference or merger however extensive shall derogate from the obligations of and restrictions on the Customer under the Agreement which shall thenceforth apply to the Software as so modified, amended, altered, interfered with or merged.

9 CONTROL, RISK AND TITLE (OWNERSHIP)

- 9.1 Control of and risk in the Equipment shall pass to the Customer in accordance with the agreed incoterms. .
- 9.2 Notwithstanding delivery and passing of risk of the Equipment, ownership of the Equipment shall not pass to the Customer until:
 - 9.2.1 the System Purchase Price has been paid in full; and
 - 9.2.2 payment is made to INTELLIGENT ULTRASOUND of any sum which is at the Commencement Date or may thereafter become due or owing from the Customer to INTELLIGENT ULTRASOUND.
- 9.3 Until ownership of the Equipment has passed to the Customer, the Customer will:
 - 9.3.1 store the Equipment separately from all other goods held by the Customer so that they remain readily identifiable as the INTELLIGENT ULTRASOUND's property;
 - 9.3.2 not obliterate any identifying mark on the Equipment or its packaging;
 - 9.3.3 maintain the Equipment in satisfactory condition and keep it insured against all risks for its full price from the date of delivery;
 - 9.3.4 notify INTELLIGENT ULTRASOUND immediately if an encumbrancer takes possession or a receiver (or similar office holder) is appointed over any of its property or assets, it makes any voluntary (or similar) arrangement with its creditors, it has an administrator appointed, it is subject to insolvency proceedings in any jurisdiction, it goes into liquidation, or it ceases or plans to cease, to carry on business; and
 - 9.3.5 give INTELLIGENT ULTRASOUND such information as it may reasonably require from time to time relating to the Equipment and the ongoing financial position of the Customer.
- 9.4 INTELLIGENT ULTRASOUND may recover Equipment in which ownership has not passed to the Customer. The Customer irrevocably licenses the INTELLIGENT ULTRASOUND, its officers, employees and agents, to enter any premises of the Customer (including with vehicles), in order to satisfy itself that the Customer is complying with the obligations in clause 9.3, and to recover any Equipment in which ownership has not passed to the Customer.

10 MAINTENANCE FEE

- 10.1 Subject to the full payment of the System Purchase Price, INTELLIGENT ULTRASOUND will provide twelve (12) months of maintenance support on the following basis:
- 10.1.1 telephone or remote online (requiring an internet connection to be available) based system support during Business Hours and on Business Days; and
 - 10.1.2 free provision of any official bug fix releases of the Software (For the avoidance of doubt this does not include any additional software modules or new variants of the system).
- 10.2 The maintenance period may be extended upon payment of the Support fee by the customer to Intelligent Ultrasound

11 DOCUMENTATION

- 11.1 INTELLIGENT ULTRASOUND shall provide the Customer with such documentation as it, in its reasonable discretion, considers necessary for the proper use of the System.

12 WARRANTY

- 12.1 INTELLIGENT ULTRASOUND will remedy a material defect in the System notified to INTELLIGENT ULTRASOUND in a twelve (12) month period following the date of delivery of the System, provided always that if INTELLIGENT ULTRASOUND is unable to do so INTELLIGENT ULTRASOUND may, at its option, replace the System.
- 12.2 The warranty contained in clause 12.1 is subject to the Customer complying with its obligations in the Agreement and to there having been no alterations to the System by any person other than INTELLIGENT ULTRASOUND (for the avoidance of doubt no other software is to be loaded onto the system or this warranty will be invalidated).
- 12.3 The warranty period in clause 12.1 may be extended upon payment of the Warranty Extension Fee by the Customer to INTELLIGENT ULTRASOUND.

13 GENERAL EXCLUSIONS AND LIMITATIONS OF LIABILITY

- 13.1 Subject to clauses 12 and 13.6 and to the maximum extent permissible in law, all conditions and warranties which are to be implied by statute or otherwise by general law into the Agreement or relating to the Equipment, the Software and/or the Services are hereby excluded.
- 13.2 The following provisions in this clause 13 set out INTELLIGENT ULTRASOUND's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Customer in respect of:
- 13.2.1 a breach of INTELLIGENT ULTRASOUND's contractual obligations;
 - 13.2.2 a tortious act or omission of INTELLIGENT ULTRASOUND; and
 - 13.2.3 an action arising out of a misrepresentation by or on behalf of INTELLIGENT ULTRASOUND (other than a fraudulent misrepresentation) arising in connection with the performance or contemplated performance of the Agreement.
- 13.3 Subject to clauses 13.4, 13.5 and 13.6, the total liability which INTELLIGENT ULTRASOUND shall owe to the Customer in respect of all claims under the Agreement shall not exceed the aggregate monies paid by the Customer to INTELLIGENT ULTRASOUND.
- 13.4 INTELLIGENT ULTRASOUND shall in no circumstances be liable to the Customer for any Consequential Loss.
- 13.5 INTELLIGENT ULTRASOUND shall in no circumstances (whether before or after termination of the Agreement) be liable to the Customer for any Loss of Data.
- 13.6 Notwithstanding anything to the contrary contained in the Agreement INTELLIGENT ULTRASOUND's liability to the Customer for:
- 13.6.1 death or personal injury resulting from the negligence of INTELLIGENT ULTRASOUND, its employees, agents or sub-contractors;
 - 13.6.2 damage suffered by the Customer as a result of a breach by INTELLIGENT ULTRASOUND of the condition as to title or the warranty as to quiet possession implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
 - 13.6.3 damage for which INTELLIGENT ULTRASOUND is liable to the Customer under Part I of the Consumer Protection Act 1987; and
 - 13.6.4 fraud; shall not be limited.

13.7 The exclusions from and limitations of liability set out in this clause 13 shall be considered severably. The validity or unenforceability of any one clause, sub-clause, paragraph or sub-paragraph of this clause 13 shall not affect the validity or enforceability of any other part of this clause 13.

13.8 The provisions of this clause 13 shall survive the termination of the whole or part of the Agreement.

14 FORCE MAJEURE

14.1 Any delay in or failure of performance of any obligation by either party (save an obligation in respect of the payment of monies) shall not constitute a breach of such obligation, but only to the extent that such a delay or failure is caused by an event which is not within the reasonable control of the party otherwise in default and which such party is unable to prevent or to circumvent by the exercise of reasonable diligence, including without limitation an event such as a strike, lock-out or other industrial action or trade dispute (whether or not involving the workforce or a part of the workforce of the party otherwise in default).

15 TERMINATION OF THE AGREEMENT

15.1 A party shall be entitled to terminate the Agreement with immediate effect by giving written notice to the other party if:

15.1.1 the other party fails to pay any undisputed amount due under the Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or

15.1.2 the other party commits a material breach of its obligations.

16 GOVERNING LAW

16.1 This Agreement and any disputes of claims arising out of or in connection with it or its subject matter and its formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of England and Wales.