

# Terms & Conditions

**mtechnical Ltd** values your business and wants to maintain a long-term relationship offering you the very best IT support. The following terms and conditions are designed to benefit all parties and we welcome your feedback if you have any concerns.

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## 1. Application

- 1.1. These Terms & Conditions shall apply to the provision of IT Goods and Services by mtechnical Ltd referred to as mtechnical and you, referred to as the Customer.
- 1.2. Throughout this document, 'we', 'us', 'our' and 'Company' refers to mtechnical Ltd
- 1.3. These Terms and Conditions will form the basis of any contract between the Company and the Customer.
- 1.4. In the event of conflict between these Terms and Conditions and any other terms and conditions (of the Customer or otherwise), the former shall prevail unless expressly agreed by the Company in writing.
- 1.5. We reserve the right to amend or vary these Terms and Conditions from time to time by notifying the Customer or placing updated Terms and Conditions on our website.

## 2. Definitions and Interpretations

- 2.1. In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

<b>“Agreement”</b>	means the agreement including, without limitation, the IT Support Agreement entered into by the Customer and the Company to which these Terms and Conditions apply.
<b>“Business Day”</b>	means any day (other than Saturday, Sunday and public holidays).
<b>“Business Hours”</b>	means the hours between 09:00 and 17:00.
<b>“Commencement Date”</b>	means the commencement date for the Services and these Terms and Conditions as set out in the Agreement.
<b>“Goods”</b>	includes, but is not limited to, hardware and development work.
<b>“Services”</b>	means the services to be provided by the Company to the Customer as set out in the Agreement; includes, but is not limited to, web hosting, email services, internet access and IT support.
<b>“Software”</b>	means any and all programs, applications, scripts, instructions or similar that may, from time to time, be installed on the Customer’s computer systems.

## 3. Agreement

- 3.1. The IT Support Agreement summary letter details the start date of the agreement.
- 3.2. The agreement and all terms and conditions in this document remain in effect until such time as written notice of termination is given by either party.
- 3.3. The term of the agreement and notice period is stated in the IT Support Agreement summary letter.
- 3.4. The Company will be under no obligation to provide support if the Customer has not paid in full the value of the agreement fee within the payment terms stated.

## 4. Hours of Service

- 4.1. The Company will provide support as described in the specification of Services between Business Hours on a Business Day.
- 4.2. Any support requested outside of these times is subject to pre-approval and will be charged at a higher rate in accordance with our payments and fees.

## 5. The Customer's Obligations

- 5.1. The Customer is responsible for ensuring a full data backup is regularly performed and ensure that backup media is rotated on schedule to offsite storage where applicable. The Company accepts no liability for any data loss in absence of a regular backup.
- 5.2. The Customer will subscribe to suitable anti-virus software and take reasonable precautions to protect against malware infection.
- 5.3. Hardware and Software must be licensed, used and maintained as prescribed by the manufacturers.
- 5.4. The Customer shall take all reasonable precautions to ensure the safety and health of the Company's personnel while such personnel are at The Customer's premises.
- 5.5. The Customer shall allow the Company administrator-level access to Equipment and all relevant Software for investigation purposes and co-operate with them in the diagnosis of any defect or malfunction in the Equipment or Software.
- 5.6. The Customer accepts responsibility for the status of their IT systems prior to the involvement of the Company.

## 6. Specification of Services

- 6.1. Computers, software and their associated products can be supplied in an imperfect state or can develop faults over time – the Company's role is to reduce the effects of such imperfections rather than to eliminate them.
- 6.2. Where an 'Unlimited Remote Support' package is in place, the Company will;
  - 6.2.1. Provide unlimited remote access support exclusively for all equipment that is noted at the start of the support contract and any additional equipment agreed by both parties.
  - 6.2.2. Provide Ad Hoc support to all other equipment in accordance with our Payments and Fees.
  - 6.2.3. Provide 'first line' support only for third party systems. Further support arrangements with the third parties may be required.
- 6.3. Unlimited remote support exclusions include, but is not limited to, unless agreed by writing in advance;
  - 6.3.1. Website design and support
  - 6.3.2. Hardware setup
  - 6.3.3. Project work as defined by the Company
  - 6.3.4. Extended third party support
  - 6.3.5. System upgrades
  - 6.3.6. Phone system support
  - 6.3.7. Non-company equipment
- 6.4. Delivery dates represent the Company's best estimate and are not guaranteed.
- 6.5. All onsite support and project work will be chargeable at our standard rate.
- 6.6. A system audit may be performed for new customers. The rectification of any pre-existing issues identified at the start of the IT Support agreement will be chargeable.

## 7. Third Party Services

- 7.1. The Company provides access to additional services via Third Parties including, but not limited to, hosted email, website hosting, domain name management, security products, cloud storage and cloud services.
- 7.2. Third Party providers apply their own Terms & Conditions to the provision of their services, the acceptance of which by the Customer is mandatory. These Terms & Conditions will relate to their function, liability, payment, acceptable use, privacy, complaints, etc.
- 7.3. The Company shall provide digital copies of relevant Third Party Terms & Conditions on request to the Customer.

7.4. Where Third Party providers apply minimum length of service, the Customer is liable for payment and providing suitable notice or termination. The period may differ from the IT Support Agreement with the Company.

## 8. Payment & Fees

8.1. The IT Support Agreement fee is based on supporting the equipment noted at the start of the agreement. This fee may increase as your IT requirement changes and will be reviewed annually.

8.2. The IT Support Agreement fee is payable monthly in advance, unless agreed otherwise in the IT Support Agreement summary letter.

8.3. Where unlimited remote support is not included, remote support attracts a minimum charge of 30 minutes.

8.4. On-site support attracts a minimum hourly charge as stated in the customer IT Support Agreement summary letter and then charged in increments of 30 minutes thereafter.

8.5. The Company will determine the amount of time required to complete work requested by the Customer.

8.6. Travel time, where charged, is based on a return trip from our premises to yours plus mileage where applicable.

8.7. The Company retains title to all goods and services on the invoice until payment has been received in full.

8.8. The Company reserves the right to terminate any services in the event of payment not being received in full.

8.9. Invoices are payable within 30 days of the invoice date.

8.10. Support booked in advance must be cancelled more than 48 working hours prior to commencement to avoid payment in full.

8.11. Late payment claims will be made under the Late Payment of Commercial Debts [Interest] Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002. In summary, 'statutory interest' will be added - this is 8% plus the Bank of England base rate for business to business transactions, plus a flat compensation fee will be added to the overdue invoice.

8.12. Failed payments and uncleared cheques will attract a £20 fee.

8.13. All rates, fees and quotes exclude VAT.

## 9. Liability

9.1. The Company shall be under no liability of whatever kind howsoever caused whether or not due to the negligence or wilful default of the Company or its servants or agents arising out of or in connection with the services. All conditions, warranties or other terms, whether express or implied, statutory or otherwise are hereby expressly excluded providing that nothing in this paragraph shall exclude or restrict any liability of the Company for death or personal injury resulting from the negligence of mtechnical or its servants or agents.

9.2. The Customer agrees that the Company shall not be liable for any direct, indirect or consequential losses occurring as a result of the Company's failure to meet relevant response times.

9.3. The Company accepts no liability for and hereby excludes any liability for any consequential or indirect losses, loss of profits, loss of business, loss of goodwill or any form of special damages.

9.4. The Company, whilst employing best practice techniques, shall not be liable for the loss or damage to software programs or data during repair or upgrade of goods or carrying out of services whether or not the same are under warranty.

9.5. All work is performed on the basis that the Customer has back-up and archiving procedures that ensure that any data or operating software lost by reason of equipment failure or as a result of maintenance operations, is recoverable from backup files or archives maintained by the Customer, without financial loss to the Customer.

9.6. In the event that liability cannot be excluded, any liability shall be limited to the amount paid by the Customer to the Company in respect of the Services supplied.

## 10. Non-Solicitation

10.1. The Customer shall not for the term of the Agreement and for a period of 12 months after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the Company at any time in relation to the Agreement without the express written consent of the Company.

10.2. The Customer shall not for the term of the Agreement and for a period of 12 months after its termination or expiry, solicit or entice away from the Company any customer or client where any such solicitation or enticement would cause damage to the business of the Company without the express written consent of the Company.

## 11. Confidentiality

11.1. Each party shall keep confidential and not disclose to any third party, information of the other which is marked confidential or by its nature is evidently confidential and is disclosed by the other party in connection with a contract under these Terms.

## 12. Termination

12.1. The notice term of the IT Support Agreement is detailed in the summary letter and can be terminated in writing by either party. All outstanding invoices become due immediately on termination.

12.2. On termination of these Terms for any reason:

12.2.1. Each party shall return and make no further use of any equipment, property, software, other items (and all copies of them) belonging to the other party.

12.2.2. mtechnical may destroy or otherwise dispose of any of the Customer Data in its possession unless mtechnical receives, no later than ten days after the effective date of the termination of these Terms, a written request for the delivery to the Customer of a copy of Customer Data. mtechnical shall use reasonable commercial endeavours to deliver the data to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by mtechnical in returning or disposing of Customer Data;

## 13. Force Majeure

13.1. If a Force Majeure Event occurs, the party that is prevented by that Force Majeure Event from performing any one or more obligations under this agreement (the "Nonperforming Party") will be excused from performing those obligations.

13.2. For purposes of this agreement, "Force Majeure Event" means, with respect to a party, any event or circumstance, regardless of whether it was foreseeable, that was not caused by that party and that prevents a party from complying with any of its obligations under this agreement (other than an obligation to pay money), on condition that that party that uses reasonable efforts to do so, except that

a Force Majeure Event will not include any a strike or other labour unrest that affects only one party, an increase in prices, or a change of law.

13.3. Upon occurrence of a Force Majeure Event, the Nonperforming Party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on performance, and how long that party expects it to last. Thereafter the Nonperforming Party shall update that information as reasonably necessary. During a Force Majeure Event, the Nonperforming Party shall use reasonable efforts to limit damages to the Performing Party and to resume its performance under this agreement.

#### 14. Law and Jurisdiction

14.1. The Agreement shall be governed by and construed in accordance with English law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English courts.