

FP-development

SERVICE AND SUPPORT - TERMS AND CONDITIONS

These Terms and Conditions govern all Services (as defined below) that are performed by FP development - also trading under the name MXFserver - for Reseller or End User. By using any Services, the End User of such Services accepts these Terms and Conditions in their entirety.

1. DEFINITIONS

1.1 In these Terms and Conditions:

“Contract Year” means each consecutive period of 365 calendar days following the Effective Date;

“Documentation” means the standard description of the functionalities and the user options of the Program Product as generally made available by FP-development. Documentation does not include advertising or marketing material;

“Effective Date” has the meaning given in clause 8.1;

“Email Support” means Software Support Services for which Service Calls will be placed at any time electronically at the Helpdesk and for which the response time is 24 hours;

“End User” means Reseller’s or FP-development’ end customer that is authorized to use the Program Product for its own internal use and not for distribution to third parties;

“Error” means an error in the code of the Software provided that such error or the correction of the same is not excluded under clause 2.6;

“Helpdesk” means the point of contact designated by FP-development for Reseller or End User to place Service Calls;

“Intellectual Property Rights” means any and all rights including but not limited to patents, patent applications and patent rights, rights associated with works of authorship including copyrights and copyright registrations, rights related to the protection of trade secrets and confidential information including rights in know-how, design rights, trademarks, trade names and trade mark applications and registrations and any rights comparable to the aforementioned rights and any other proprietary rights relating to intellectual property;

“Phone Support” means Software Support Services for which Service Calls will be placed by telephone at the Helpdesk, during the office hours set out in a purchase order accepted by FP-development;

“Price List” means FP-development’ then-current standard price list in euro for the Program Product, as may be amended by FP-development from time to time;

“Program Product” means any Software, hardware or Services, as set forth and described in the Price List;

“Purchase Order” means the document by which Reseller or End User orders the Services. The document may be a Services quote or order form provided by FP-development or a written purchase order issued by Reseller or End User that references these Terms and Conditions;

“Reseller” means a reseller of the Program Product under a duly signed and validly existing reseller agreement with FP-development;

“Service Call” means a call for Software Support Services by Reseller or End User;

“Services” means the Software Support Services and/or any installation, commissioning, training, consultation and other services performed by FP-development for the Reseller or the End User directly, always subject to these terms and conditions;

“Severity Level” means the level that FP-development assigns to each support case that is created for a Reseller or End User. The level of severity is determined by the impact that a particular problem has on the End User’s operations;

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“**Software**” means FP-development’ commercially available software, as set forth and described in the Price List. For the purpose of these Terms and Conditions, Software does not include third party software applications which are included with a Program Product, but are not required to operate the Program Product;

“**Software Support Services**” means software support services in relation to the Software performed by FP-development for a Reseller in relation to an End User or for the End User directly, as set forth and described more fully in clause 2;

“**Support Fee**” means the fee for the Software Support Services, as set out in the Price List;

“**Updates**” means Software releases, provided by FP-development from time to time in its sole discretion, that are patches, workarounds or bug fixes that correct coding or make minor enhancements to the functionality or performance of the Software, but do not add new functionality. All Updates shall be provided as part of the Software Support Services;

“**Upgrades**” means Software releases that contain significant enhancements to the functionality or performance of the Software. Software that is marked by FP-development as a new software product and subject to new or additional license fees is not an Upgrade.

2. SOFTWARE SUPPORT SERVICES

2.1 FP-development distinguishes the following three support levels:

Level 1: the services provided in response to the End User’s initial contact phone call: provides remote support and assistance to End User in problem resolution. Support is provided through utilizing problem history searches, problem determination tools (Q&A), problem resolution histories, configurations, manuals and other tools;

Level 2: the services provided to reproduce the Error and attempt to correct the Error or to find that FP-development cannot reproduce the Error;

Level 3: the services provided to isolate the Error at the component level of the code and to distribute the Error correction or workaround or give notice if no Error correction or workaround is available.

2.2 Upon identification of any Error, FP-development shall be notified of such Error through the Helpdesk and shall be provided with enough information to allow FP-development to reproduce the Error. FP-development shall provide Reseller or End User: (a) assistance in relation to questions on the installation and operational use of the Program Product, (b) assistance in identifying and verifying the causes of suspected Errors, (c) providing workarounds for identified Errors or malfunctions in the Software, if reasonably available to FP-development.

2.3 FP-development shall use for the Phone Support the following Severity Levels and related response times:

Severity Level 1: The problem is preventing the system from working at all. Production is impacted for all users and there is no reasonable bypass to carry out operations.

Response: call back from receipt of Service Call by Helpdesk within 30 minutes.

Severity Level 2: The problem is preventing a major function of the system from working. Production is impacted but there is a bypass that is carrying some of the work to completion.

Response: call back from receipt of Service Call by Helpdesk within 2 hours.

Severity Level 3: The problem is preventing a non-critical function of the system from working properly. There might be some impact to production but users are bypassing the problem in such a way that the effect of the problem is negated.

Response: call back from receipt of Service Call by Helpdesk within 24 hours.

Severity Level 4: There is a minor or intermittent problem in one of the minor functions of the system. The users have adopted an alternative approach to do their work but would like the problem to be fixed.

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Response: call back from receipt of Service Call by Helpdesk within a week.

Informational (e.g. user "how-to" and "usage" questions): Inquiries or questions are typically handled by Level 1 support or by referring to support Documentation, but if they need to go to Level 2 support, they receive similar treatment as problems with severity level 4.

- 2.4 Software Support Services will be available to Reseller or End User through the Helpdesk only and subject always to Reseller or End User complying with its obligations set out in clause 2.5.
- 2.5 Without prejudice to Reseller's and End User's other obligations under these Terms and Conditions, Reseller and End User shall:
- (a) ensure that only persons properly trained in the operation and usage of the Program Product will utilize the Software Support Services;
 - (b) place Service Calls at the Helpdesk only;
 - (c) allow the use of on-line diagnostics of the Program Product during Error diagnosis; and
 - (d) not connect, directly or indirectly, the Program Product to the internet, except if and when instructed by FP-development in relation to Reseller's and End User's obligation under item (c) above or in accordance with the Documentation.
- 2.6 **Exclusions.** FP-development shall not be responsible for correcting any Errors that cannot be reproduced by FP-development on the unmodified Program Product or Errors caused by any of the following: (a) Reseller's or End User's failure to implement all updates, Error corrections or new Program Product issued under the Software Support Services, (b) changes to the operating system or environment that adversely affect the Program Product, (c) any alterations of or additions to the Program Product made by any party other than FP-development, (d) use of the Program Product in a manner for which it was not designed, (e) accident, negligence or misuse of the Program Product or (f) use of the Program Product on hardware or operating software other than as prescribed by FP-development. FP-development shall only be obliged to support a particular version of the Program Product for a period of the longer of (i) one (1) year from the date of commercial release of such version or (ii) six (6) months following the date of commercial release of the subsequent Upgrade. However, where End User's update schedule falls outside of these timescales FP-development will support that version for up to a year from release of the Upgrade.

3. PRICES AND PAYMENT

- 3.1 Software Support Services will be available to Reseller and End User in the form (Email Support and/or Phone Support), at the support level, during the office hours, during the Contract Year and for the Support Fee set out in the Price List.
- 3.2 The Reseller or the End User shall be entitled only to the Software Support Services for which (i) FP-development has accepted a Purchase Order in writing and (ii) the Reseller or the End User has paid the Support Fee.
- 3.3 The Reseller or the End User (as the case may be) will pay the Support Fee and/or the fee for the other Services in accordance with the Price List or as set forth in the Purchase Order. Each form of Software Support Services is for a minimum of twelve (12) months and may be initially purchased up to a maximum of five (5) years.
- 3.4 The Support Fee to renew the Software Support Services shall be the Support Fee in effect at the time of the renewal, unless otherwise set forth in a Program Product quote from FP-development.

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All fees for Services are exclusive of insurance, taxes and duties, all of which shall be paid by Reseller or End User (as the case may be).

- 3.5 If End User has allowed the Software Support Services to lapse greater than six (6) months without renewing and subsequently elects to purchase Software Support Services, the End User may reinstate lapsed Software Support Services by paying all Support Fees that are in arrears, plus any costs, on a time and material basis, that FP-development incurs to update End User's installation of Program Products to current versions (if applicable) or to resolve Errors caused by or arisen during the lapse.
- 3.6 The payment of the Support Fee shall be due at the start of the Contract Year to which the Support Fee relates and in no event later than thirty (30) days from the date of invoice. All payments will be made in euro, free of any currency controls or other restrictions.
- 3.7 If Reseller does not pay the amounts due within 30 (thirty) calendar days as from the date of the invoice, Reseller shall be obliged to pay FP-development the statutory commercial interest on the outstanding amount for the duration that this amount remains unpaid, without prejudice to FP-development's other rights. Reseller shall pay all costs of collection, including reasonable attorneys' fees. FP-DEVELOPMENT RESERVES THE RIGHT TO REFUSE SOFTWARE SUPPORT SERVICES TO ANY RESELLER OR END USER WHO IS NOT CURRENT IN ITS PAYMENT OF THE SUPPORT FEE TO FP-DEVELOPMENT.

4. LIMITED SERVICES WARRANTY AND LIMITATION OF LIABILITY

- 4.1 FP-development warrants that it will use commercially reasonable efforts to perform the Services described hereunder. FP-development's entire liability and Reseller or End User's exclusive remedy for breach of this warranty shall be for Reseller or End User to cancel the Service if FP-development fails to remedy the defective Service within thirty (30) days of notice from Reseller or End User. If Reseller or End User cancels Software Support Services due to FP-development's breach of this warranty, FP-development will refund to Reseller or End User a pro-rata portion of the Support Fee based upon the time period remaining for the Software Support Services period for Reseller or End User as of the date FP-development receives Reseller or End User's notice of cancellation.
- 4.2 THIS WARRANTY SETS FORTH THE ENTIRE LIABILITY AND OBLIGATIONS OF FP-DEVELOPMENT AND ITS SUPPLIERS WITH RESPECT TO BREACH OF WARRANTY, AND THE WARRANTIES SET FORTH OR LIMITED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF NONINFRINGEMENT, FITNESS FOR PARTICULAR PURPOSE AND MERCHANTABILITY. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD.
- 4.3 FP-DEVELOPMENT (INCLUDING ANY OF THE PERSONNEL UTILIZED BY FP-DEVELOPMENT IN PROVIDING THE SERVICES) AND RESELLER OR END USER SHALL NOT BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONDITIONAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSS (INCLUDING DAMAGES FOR LOSS OF DATA, LOSS OF BUSINESS, LOSS OF PROFITS, OR THE LIKE), HOWEVER CAUSED, ON ANY THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, BREACH OF CONTRACT OR OTHERWISE), EVEN IF A PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FP-DEVELOPMENT'S CUMULATIVE LIABILITY FOR ALL CAUSES OF ACTION ARISING OUT OF THIS AGREEMENT AND/OR THE PERFORMANCE OF THE SERVICES (INCLUDING UNDER ANY WARRANTY EXTENDED IN CONNECTION THEREWITH) SHALL BE LIMITED TO THE AMOUNT PAID BY RESELLER OR END USER FOR

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THE SERVICES GIVING RISE TO THE CLAIM, OR, IN THE EVENT THAT THE RESPECTIVE SERVICES ARE OFFERED WITHOUT CHARGE, THE PRICE SET OUT IN THE PRICE LIST FOR SUCH SERVICES. THIS LIABILITY LIMIT IS CUMULATIVE AND NOT PER INCIDENT. THE FOREGOING LIMITATION OF LIABILITY WILL NOT APPLY TO ANY LOSS OR DAMAGE FOR (A) PERSONAL INJURY OR (B) PROPERTY DAMAGE TO THE EXTENT CAUSED BY FP-DEVELOPMENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

- 4.4 THE LIMITED WARRANTY, EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY SET FORTH IN THIS CLAUSE 4 ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN FP-DEVELOPMENT AND RESELLER OR END USER. RESELLER OR END USER AGREES THAT FP-DEVELOPMENT WOULD NOT BE ABLE TO PROVIDE THE SERVICES ON AN ECONOMIC BASIS WITHOUT SUCH LIMITATIONS.

5. TAXES

- 5.1 All amounts and payments referred to in these Terms and Conditions are expressed exclusive of any sales, use, value added or other indirect taxes. FP-development will charge against the statutory rate and Reseller or End User will pay any and all applicable sales, use, value added or other indirect taxes that FP-development may be due in relation to the Services. If applicable, FP-development shall ensure that a valid invoice is issued to Reseller or End User. FP-development shall use commercially reasonable efforts to properly calculate any applicable taxes at the time of invoice. If, under the laws of any jurisdiction, Reseller or End User is required to withhold any taxes on payments to FP-development, then the amount of the payment will be automatically increased to totally offset such taxes, so that the amount actually remitted to FP-development, net of all taxes, equals the amount invoiced or otherwise due. Exemption certificates, valid in the place of performance of the Services, must be presented to FP-development prior to performance of the Services if they are to be honored.

6. CONFIDENTIALITY

- 6.1 Each party agrees to treat any information that would reasonably be understood to be confidential ("**Confidential Information**") disclosed by the other party in the course of obtaining or providing the Services as strictly confidential, and use such Confidential Information only for the purposes of using and providing the Services as permitted hereunder. In the event that party receiving Confidential Information is compelled to disclose the Confidential Information by law, the receiving party will first notify the disclosing party.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The terms and conditions of your license to any Software are set forth in the relevant End User License Agreement. FP-development retains all title, copyright, patent rights and other proprietary rights in the Software, Software development tools, routines and computer programs and all tools, routines, programs, designs, technology, ideas, know-how, processes, formulas, techniques, improvements, inventions and works of authorship which are made, developed, conceived or reduced to practice by FP-development in its performance of the Services ("**Technology**"). The provision of Services shall not convey or confer upon Reseller or End User or any third party a license, express or implied to any Program Product or Technology. Feedback and other information that is provided by Reseller or End User to FP-development in connection with the Services may be used by FP-development to improve or enhance its Program Products and, accordingly, FP-development shall have a non-exclusive, perpetual license to use, reproduce, disclose, distribute, modify and otherwise exploit such feedback and information for any purpose and in any medium or

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product without restriction. Such right and license shall survive any termination or expiration of the Services engagement for any reason.

8. TERM AND TERMINATION

- 8.1 The first Contract Year for the Software Support Services shall commence upon the later of (a) the delivery of the Software to which the Software Support Services apply, provided that the Software Support Services were ordered by the Reseller or End User prior to delivery of the Program Product, or (b) the date on which the Reseller or End User (as the case may be) submits payment for the applicable Software Support Services in the event the Reseller or End User purchases the Software Support Services after delivery of the Software to which the Software Support Services apply ("**Effective Date**") and shall continue for the time period for which Reseller or End User has ordered the Software Support Services.
- 8.2 The contract will be tacitly renewed for a period of 12 months at the end of the first contract period and each year thereafter, unless either party terminates any or all Software Support Services by written notice at least thirty (30) days prior to the expiration of the current period. In addition, Reseller or End User may terminate the Software Support Services at any time upon written notice to FP-development, for any reason or no reason, but Reseller or End User shall not be entitled to any refund of the Support Fee attributable to the remainder of the (renewed) contract term.
- 8.3 Notwithstanding anything to the contrary, Software Support Services may be terminated immediately by FP-development in the event of (i) failure of Reseller or End User to pay amounts due hereunder and failure to remedy such breach within thirty (30) days after written notification by FP-development of such breach, provided, however, that no cure period shall apply to Reseller's or End User's failure to timely pay the initial payment for Software Support Services, (ii) in the event of transfer or sale of all or substantially all of Reseller or End User's assets, or transfer of a controlling interest in Reseller or End User to an unaffiliated third party, (iii) Reseller or End User ceasing to carry on business as a going concern, becoming the object of the institution of voluntary or involuntary proceedings in bankruptcy or liquidation, or a receiver being appointed with respect to a substantial part of Reseller's or End User's assets or (iv) any material breach of these Terms and Conditions or any provision thereof by Reseller or End User.
- 8.4 Clause 1 (Definitions), clause 4.2 (Disclaimer of Warranty), clause 4.3 (Limitation of Liability), clause 8 (Terms and Termination), clause 10 (Miscellaneous) and clause 11 (Applicable Law and Dispute Resolution) will survive with respect to any payment obligations incurred for the Services.

9. FORCE MAJEURE

- 9.1 Neither party shall be liable in any way for any delay or inability to perform any obligation hereunder due to any cause beyond its reasonable control, including, but not limited to, acts of God, labor difficulties, inability obtain materials, strike, lockout, riot, war, terrorist attack, outbreak of viruses, accident, fire, ash clouds and compliance with any law, regulation or order of any recognized governmental body.
- 9.2 Parties agree to give notice forthwith to the other party upon becoming aware of a force majeure event, which notice shall contain details of the relevant circumstances.
- 9.3 If a force majeure event continues for a period of more than 30 (thirty) calendar days, then the other party than the party that failed to perform under a force majeure event shall be entitled to terminate the Services. Neither party shall have any liability to the other party in respect of the termination of the Services due to a force majeure event.

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10. MISCELLANEOUS

- 10.1 To the extent permitted by local law, the parties will conduct transactions using an electronic commerce approach under which the parties will electronically transmit and receive legally binding purchase and sale obligations of the Services.
- 10.2 If any provision of these Terms and Conditions is found or held to be invalid, unlawful or unenforceable by a court of competent jurisdiction, such validity shall not affect the validity or operation of any other provision and such invalid provision shall be severed from these Terms and Conditions.
- 10.3 The failure of either party to enforce any rights under these Terms and Conditions or to take action against the other party in the event of a breach will not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.
- 10.4 These Terms and Conditions may be amended or deviated from by written agreement only.

11. APPLICABLE LAW AND DISPUTE RESOLUTION

- 11.1 These Terms and Conditions shall be governed by and construed in accordance with the laws of the Netherlands.
- 11.2 All disputes, controversies or claims between the parties arising out of or in connection with these Terms and Conditions shall be finally settled by an arbitral tribunal in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. The arbitral tribunal shall decide in accordance with the rules of law and not as amicable settlement. The arbitral proceedings shall be conducted in the English language. The place of arbitration shall be Amsterdam.