



## TERMS AND CONDITIONS OF SERVICE AGREEMENTS (England, Scotland, Wales, Northern Ireland, and Republic of Ireland)

### 1. Acceptance

- (a) "Clearmark" refers to Clearmark Solutions Limited registered in England and Wales with company number 04249374, the "Customer" refers to the person, firm or company identified in the Service Agreement Order Form who purchases the Services from Clearmark.
- (b) These Terms and Conditions of Service Agreements together with the documents expressly referred herein to constitute the "Service Agreement".
- (c) The Service Agreement Order Form constitutes an offer by Clearmark to provide the Services in accordance with the terms of the Service Agreement and such offer shall be deemed to be accepted when the Customer signs the Service Agreement Order Form at which point and on which date a contract shall come into existence.
- (d) Any quotation for the Services given by Clearmark shall not constitute an offer capable of acceptance, and is only valid for a period of twenty (20) business days from its date of issue.

### 2. Services

- (a) Clearmark shall provide the maintenance services substantially as described in the Service Agreement, if any, for the equipment identified in the Service Agreement ("Equipment"), repair services included in the Service Agreement, if any, for the Equipment if the Equipment fails to conform in all material respects to Clearmark's specifications as set out in the relevant equipment manual, and any other services included in the Service Agreement (collectively, "Services").
- (b) Clearmark reserves the right to make any changes to the Services that are necessary to comply with any applicable law, regulatory requirement or safety requirement, or that do not materially affect the nature or quality of the Services, and Clearmark shall notify the Customer in any such event.
- (c) All intellectual property rights in or arising out of or in connection with the Services shall vest in and be owned by Clearmark and no licence or transfer of such intellectual property right shall occur except as expressly provided for in this Services Agreement.
- (d) Any replacement parts provided pursuant to the Service Agreement will be new or equivalent in performance to new parts, at no extra charge to the Customer. Parts being replaced will be the property of Clearmark. The Customer acknowledges certain parts may be subject to discontinuance by the manufacturer, in which event Clearmark's obligation shall be limited to it making reasonable endeavours to replace such discontinued parts with a materially equivalent part.
- (e) Clearmark shall use reasonable endeavours to provide Services during Clearmark's standard local business hours, which excludes weekends and Clearmark holidays.
- (f) Clearmark will use reasonable endeavours to meet any performance dates specified in the Service Agreement, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- (g) Clearmark will provide Services on the Customer's premises unless it is necessary to remove Equipment for Service, or a portion thereof, to the Clearmark's repair depot for maintenance.
- (h) Clearmark warrants to the Customer that the Services will be provided using reasonable care and skill.
- (i) The Customer will incur and pay charges in accordance with the charges and payment provisions set out in the relevant Clearmark quotation as agreed with the Customer. For the sake of certainty, the following services are not included in the Service Agreement and the Customer shall be charged separately for any such service, unless otherwise expressly provided in the relevant accepted Clearmark quotation:
  - i) maintenance of accessories or attachments;
  - ii) maintenance of Equipment if the Customer's modification of Equipment has materially increased cost of maintenance;
  - iii) overhauling or rebuilding of Equipment;
  - iv) replacement of continuous ink jet nozzles for Clearmark Excel Triumph or 37 series printers;
  - v) replacement of thermal transfer and label print applicator printheads,
  - vi) if the Customer uses supplies and other consumables not approved by Clearmark for use with Equipment; and
  - vii) de-installation or reinstallation of Equipment or any part thereof at the Customer's request.
- (j) The Service Agreement does not cover repairs or maintenance resulting from:
  - i) Customer misconduct, accident, neglect or misuse;
  - ii) failure of installation site to conform to Clearmark's applicable specifications;
  - iii) failure or inadequacy of electric power, humidity or air control;
  - iv) the Customer's use of supplies and other consumables not approved by Clearmark for use with Equipment;
  - v) the Customer's failure to follow operating procedures provided by Clearmark;

- vi) service or maintenance performed by a third party or an unauthorised representative of Clearmark; and
- vii) Force Majeure (as defined in clause 8).

### 3. Billing and Payment

- (a) Payment in full is due within thirty (30) days of the Customer's receipt of invoice unless otherwise agreed in writing by Clearmark and the Customer shall make payment in full and in cleared funds to a bank account nominated in writing by Clearmark. Clearmark shall issue invoices in advance of each payment period identified in the Service Agreement ("Payment Period").
- (b) If the Customer fails to make a payment due to Clearmark by the due date, then, without limiting any other remedies available to Clearmark, the Customer shall pay interest on any overdue amount in accordance with the terms of the Late Payment of Commercial Debts (Interest) Act 1988. 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.
- (c) Clearmark may require payment in advance if in its opinion the Customer's financial condition reasonably appears to call for such action.
- (d) The fee for the Service Agreement is based on Clearmark performing Services at the location identified in the Service Agreement Order Form. If the Customer relocates Equipment or any part thereof, Clearmark may increase the fee if such relocation affects Clearmark's cost of performing its obligations hereunder. If Equipment is located outside the United Kingdom Clearmark may at its option provide the Services and the Customer agrees to pay prevailing travel rates and reasonable expenses incurred by Clearmark or Clearmark's authorised representative in connection with performing its obligations hereunder.
- (e) All amounts payable by the Customer under this Service Agreement are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under these Customer by Clearmark's to the Customer, the Customer shall, on receipt of a valid VAT invoice from Clearmark, pay to Clearmark 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.
- (f) Payments are not subject to setoff counterclaim, deduction, withholding (except for any deduction or withholding required by law) or recoupment for any present or future claim the Customer may have.
- (g) Clearmark reserves the right to increase the payments on an annual basis with effect from each anniversary of the commencement date of the Service Agreement in line with the percentage increase in the Producer Price Index in the preceding twelve (12) month period and the first such increase shall take effect on the first anniversary of the commencement date of the Service Agreement and shall be based on the latest available figure for the percentage increase in the Producer Price Index.

### 4. The Customer's Obligations

- (a) The Customer shall:
  - i) ensure that the information provided on the Service Agreement Order Form is complete and accurate;
  - ii) provide Clearmark, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Clearmark to provide the Services and;
  - iii) take the necessary precautions to ensure the health and safety of Clearmark's personnel while present on the Customer's premises;
  - iv) provide Clearmark with such access to relevant employees, information and materials as Clearmark may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - v) exercise reasonable skill and care in operation and normal maintenance of Equipment and maintain Equipment in conformance with Clearmark's maintenance standards, which shall include following and performing Clearmark's recommended customer care and cleaning program between calls of Clearmark's service representative;
  - vi) operate Equipment within Clearmark's published specifications (including, without limitation, all environmental specifications);
  - vii) properly maintain installation site and operating environment;
  - viii) provide necessary utility services for use of Equipment in accordance with Clearmark's specifications;
  - ix) use only Clearmark branded consumables and fluids with the Equipment; and
  - x) co-operate with Clearmark in all matters relating to the Services and obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start.
- (b) If Clearmark's performance of any of its obligations hereunder is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):
  - i) without limiting or affecting any other right or remedy available to it, Clearmark shall 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 in each case to the extent the Customer Default prevents or delays the Clearmark's performance of any of its obligations;
  - ii) Clearmark shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Clearmark's failure or delay to perform any of its obligations as set out in this clause 4(b); and

- iii) the Customer shall reimburse Clearmark on written demand for any costs or losses sustained or incurred by Clearmark arising directly or indirectly from the Customer Default.

## 5. Limited Warranty

- (a) Clearmark warrants the Services strictly as provided in the Service Agreement.
- (b) Certain printing applications may be regulated by applicable laws, such as applications where ink may come into contact with medical devices, pharmaceuticals, cosmetics, food or other substances intended for consumption, or veterinary health products. It is the Customer's obligation to comply with and to ensure that the performance of the terms of this Service Agreement comply with all applicable laws and regulations. Clearmark shall not be responsible for any compliance with any laws applicable to the Customer. The Customer shall indemnify Clearmark for any losses it suffers as a result of the Customer's non-compliance under this clause 5(b).

## 6. Confidentiality and Data Privacy

- (a) A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain.
- (b) The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Service Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Service Agreement. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- (c) The collection, storage, deletion and use of personal data from Buyer and its employees takes place in full compliance with the relevant data protection regulations according to the Privacy Policy of Clearmark. Further information on data processing, data security and data protection also be found in the Privacy Policy.

## 7. Remedies and Liability

- (a) Without waiving any other rights or remedies available to it under applicable law or otherwise, Clearmark may suspend provision of Services hereunder if the Customer fails to pay any amount due until all past due accounts of the Customer are fully satisfied and Clearmark shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from such suspension.
- (b) Clearmark's rights and remedies herein are in addition to, and not in lieu of, any other rights or remedies Clearmark may have at law or in equity.
- (c) Nothing in the Service Agreement shall limit any liability which cannot legally be limited, including but not limited to liability for
  - i) death or personal injury caused by negligence;
  - ii) fraud or fraudulent misrepresentation; or
  - iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- (d) Subject to the sub-clause (c) above, Clearmark shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for the following types of loss:
  - i) any direct or indirect loss of profit;
  - ii) any indirect or consequential loss;
  - iii) loss of sales or business;
  - iv) loss of use or corruption of software, data or information;
  - v) loss of agreements or contracts; or
  - vi) loss of or damage to goodwill, arising under or in connection with the Service Agreement.
- (e) Subject to sub-clauses (c) and (d) above, Clearmark's total liability to the Customer in respect of all other liabilities, costs, expenses, damages and losses howsoever arising under or in connection with the Service Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amounts paid by the Customer to Clearmark pursuant to the Service Agreement.

## 8. Term and Termination

- (a) The Service Agreement is effective during the Term identified in the Service Agreement Order Form.
- (b) Following signature of a Service Agreement Order Form, the contract pursuant to this Services Agreement is irrevocable and no refund will be issued by Clearmark.
- (c) Without limiting any other available legal or equitable rights or remedies, either party may terminate the Service Agreement immediately at any time for cause upon written notice to the other if the other party:
  - i) fails to perform any material obligation of the Service Agreement and (if such breach is remediable) fails to remedy that breach within thirty (30) days after receipt of notice in writing to do so;
  - ii) takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its

assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- iii) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - iv) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Service Agreement has been placed in jeopardy.
- (d) Upon termination pursuant to this clause:
    - i) the Customer shall immediately pay all amounts due under the Service Agreement;
    - ii) the Customer shall return all of Clearmark's materials which have not been fully paid for. If the Customer fails to do so, then Clearmark 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 Service Agreement.
  - (e) Either party may terminate the Service Agreement for its convenience upon thirty (30) days prior written notice to the other party. However, the parties acknowledge and agree that the Term identified in the Service Agreement is the essence of Clearmark's pricing and Clearmark will suffer losses if the Service Agreement is terminated prior to the expiration of such Term. Therefore, in the event of termination for convenience by the Customer during the Term, the Customer shall pay an early termination fee to reimburse Clearmark for such losses; such fee is a genuine pre estimate of Clearmark's loss and is to be construed as liquidated damages and not as a penalty. The early termination fee will be computed as follows: Months Remaining in Term x Monthly Fee (Pro-Rated for Annual/Quarterly Service Agreements) x 65%. This early termination fee shall not apply in the event of early termination of the Service Agreement during a renewal term.
  - (f) Notwithstanding the foregoing and for the avoidance of doubt, if the Equipment is upgraded to new Clearmark equipment with a corresponding Service Agreement then Clearmark shall not charge an early termination fee to the Customer.
  - (g) Clauses 5, 6, 7, 8, 11 and 12 shall survive termination of the Service Agreement.

## 9. Force Majeure

- (a) Except for the Customer's payment obligations, neither party shall be liable for delays in performance or non-performance, in whole or in part, resulting from causes beyond its reasonable control, such as acts of God, fire, strikes, epidemics, pandemics, embargos, acts of government or other civil or military authority, war, riots, delays in transportation, difficulties in obtaining labour, materials, manufacturing facilities or transportation, or other similar causes ("**Force Majeure**"). In such event, the party delayed shall promptly give notice to the other party. The party affected by the delay may:
  - i) extend the time for performance for the duration of the event; or
  - ii) cancel all or any part of the unperformed part of the Service Agreement and/or any purchase order if such event lasts longer than sixty (60) days.
- (b) If a Force Majeure event affects Clearmark's ability to meet its obligations at the agreed upon pricing, or Clearmark's costs are otherwise increased as a result of such an event, Clearmark may increase pricing accordingly upon written notice to the Customer.

## 10. Assignment: Successors and Assigns

The Customer may not assign the Service Agreement without Clearmark's prior written consent. Any assignment contrary to this clause 10 shall be null and void. The Service Agreement shall apply to and to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

## 11. Governing Law, Venue, Actions

- (a) The Service Agreement, 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.
- (b) 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 Service Agreement or its subject matter or formation (including non-contractual disputes or claims).
- (c) Any action regardless of form, arising out of the Service Agreement brought by the Customer must be commenced within twelve (12) months of the day on which the Customer became, or ought reasonably to have become, aware of its having grounds to make a claim and the Customer hereby irrevocably waives its right to bring any such claim after the expiry of such period.

## 12. Miscellaneous

- (a) The Service Agreement constitutes the entire agreement between the parties in relation to its subject matter. It replaces and extinguishes all prior agreements, collateral warranties, collateral contracts, statements, representations and undertakings made by or on behalf of the parties, whether oral or written, in relation to that subject matter.
- (b) Each party acknowledges that in entering into this Service Agreement it has not relied upon any collateral warranties, collateral contracts, statements, representations or undertakings, whether oral or written, which were made by or on behalf of the other party in relation to the subject-matter of this

Service Agreement (together "**Pre-Contractual Statements**") and which are not set out in this Service Agreement.

- (c) Each party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements.
- (d) Nothing in this clause shall exclude or restrict the liability of either party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.
- (e) Any samples, drawings, descriptive matter or advertising issued by Clearmark, and any descriptions or illustrations contained in Clearmark's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Service described in them. They shall not form part of the Service Agreement or have any contractual force.
- (f) These Terms apply to the Service Agreement 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.
- (g) In the event of any conflict between any of the documents comprising the Service Agreement, the descending order of precedence will be the terms and conditions in this Service Agreement, the Service Agreement Order Form and then any other document expressly referred to in this Service Agreement.
- (h) If any provision of the Service Agreement to any extent is declared 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 the Service Agreement will not affect the validity and enforceability of the rest of the Service Agreement.
- (i) Any modifications hereto must be in writing and signed by a duly authorised signatory of both parties.
- (j) Either party's failure to strictly enforce any of these terms shall not be considered a waiver of any of its rights hereunder.
- (k) Any reference to a statute or statutory provision is a reference to such statute or 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.
- (l) 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.
- (m) Clearmark and the Customer are sophisticated business entities with comparable bargaining position and although this Services Agreement is on Clearmark's standard terms, the parties have had an opportunity to procure independent legal advice as to their effect and to negotiate the terms herein.
- (n) Nothing in the Service Agreement 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.
- (o) A person who is not a party to this Services Agreement may not enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999.
- (p) Termination or expiry of the Service Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Service Agreement which existed at or before the date of termination or expiry. The termination or expiration of the Service Agreement will not affect the survival and continuing validity of any provision which expressly or by implication is intended to continue in force after such termination or expiration.
- (q) Any notice or other communication given to a party under or in connection with the this Service Agreement 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.
- (r) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred above; if sent by pre-paid first class post or other next working day delivery service, at 9.00 AM 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.