



General Terms and Conditions

By accepting this agreement, the Customer agrees to the following terms and conditions:

1. Nature of the Agreement

- 1.1 Maxtec Peripherals (Pty) Ltd ("Maxtec") is a supplier of telecommunications and information technology products and services.
- 1.2 The Customer wishes to purchase products and/or services from Maxtec.
- 1.3 This agreement sets out the general terms and conditions that apply to the provision of all products or services to the Customer
- 1.4 This agreement shall act as a base agreement under which the parties can enter into multiple specific transactions by executing quotes, purchase orders and/or delivery notes.
- 1.5 At any time, the Customer may request from Maxtec additional Services, whereby Maxtec shall issue a quote, purchase order, and/or delivery note.
- 1.6 All quotes, purchase orders and/or delivery notes that are negotiated between the parties shall be in writing and executed by both parties and shall be attached hereto as supplemental annexures, and shall be incorporated into, and governed by, this agreement. This agreement (including all quotes, purchase orders and/or delivery notes) shall form a single integrated agreement between the parties.

2. Provision of Services

- 2.1 Maxtec will provide the Customer with the Proof of Concept (POC) services as described above ("Services"). In providing the Services Maxtec may lend certain devices or equipment to the Customer ("Materials"). The Customer may use the deliverables provided through the Services in accordance with and subject to this agreement. The Services are provided to the Customer solely for the Customer's internal use.
- 2.2 The Customer agrees to provide Maxtec with such cooperation, materials, information, access and support which Maxtec deems to be reasonably required to allow Maxtec to successfully provide the Services. The Customer understands and agrees that Maxtec's obligations hereunder are expressly subject upon the Customer providing such cooperation, information, access and support.
- 2.3 The parties recognise that while every effort is made to provide an evaluation appliance that closely matches the required Customer specifications, this is not always possible.
- 2.4 Maxtec shall be providing identical services to other Customers and nothing herein shall impair its right or ability to do so.

3. Payment

- 3.1 The Customer shall pay Maxtec the Services fees in the amounts and at the rates set forth in the applicable quote, purchase order and/or delivery note.
- 3.2 Maxtec and the Customer hereby agree that the value of the POC Services to be provided is R1 000.00 (one thousand Rand) per hour spend on site, subject to the following discount provisions: (a) should the product be procured through Maxtec the discount for these POC Services will be 100%; (b) should the end user choose not to procure the technology at all, not from Maxtec or any other channel whatsoever, then no discount will be applicable (there will be a 0% discount) for the Services and payment for the Services rendered become immediately due and payable; (c) should the Customer choose to procure the Services through an alternate channel to Maxtec then no discount will be applicable (there will be a 0% discount) and payment for the Services rendered become immediately due and payable.
- 3.3 If the prerequisites are not met and Maxtec's engineer is forced to return to the site to complete the evaluation installation at a later date, a rate of R1 000.00 (one thousand Rand) per hour or part thereof will be charged for Maxtec's engineers.
- 3.4 All prices and fees payable under this agreement are exclusive of VAT and any other applicable tax. The Customer shall be responsible for any tax or duty payable. Unless otherwise specified, all invoices are due upon receipt and must be paid within 30 (thirty) days. Payments are non-refundable and will be made without right of set-off. If the Customer does not pay the invoices when due, Maxtec may charge interest at 2% (two per cent) per month, compounded. If payment of any fee is overdue, Maxtec may also suspend provision of the Services until such default is remedied.
- 3.5 Notwithstanding termination of this agreement, the Customer shall remain responsible for payment of all fees incurred up to and including the effective date of termination.

4. Ownership Acknowledgment

- 4.1 All rights and property interests, including but not limited to patents, copyrights, trademarks and other proprietary rights recognised under applicable law in or relating to the Services and associated tools (including all evaluation appliances) are owned exclusively by Maxtec and all such rights not expressly granted herein are reserved to Maxtec.
- 4.2 Any and all inventions, improvements developments or other intellectual property rights generated by Maxtec or its subcontractors in the course of performing the Services shall be the sole and exclusive property of Maxtec.
- 4.3 The Customer agrees and acknowledges that the Customer is not obtaining any intellectual property right in or to any Materials provided by Maxtec to the Customer in connection with the provision of the Services, other than the rights specifically granted in this agreement.

5. Risk of Loss

- 5.1 In providing the Services to the Customer, Maxtec may lend Materials to the Customer. Maxtec may elect at its sole discretion not to charge the Customer a fee for the Materials, should the Customer make such a request. The Customer hereby assumes and shall bear the entire risk of loss and damage to the Materials from any and every cause. The Materials shall be the responsibility of the Customer and the Customer shall use the Materials in a careful and proper manner.
- 5.2 Maxtec shall not be responsible for loss or damage to the Materials while such Materials are in the care, custody, control or under the Customer's control. Maxtec shall at all times retain ownership and title of the Materials.
- 5.3 In the event that any of the Materials is lost or stolen or there is damage of any kind whatsoever to the Materials, the Customer shall be liable to Maxtec. The Customer shall notify Maxtec immediately and at Maxtec's option the Customer shall replace the same with like equipment in good repair, condition and working order; or pay to Maxtec the replacement cost of the Material.
- 5.4 The Customer shall give Maxtec immediate notice in the event that any of the Materials is levied upon or is about to become liable or is threatened with seizure and the Customer shall indemnify Maxtec against all loss and damage cause by such action.

6. **Indemnification**
- 6.1 To the extent that any cost, claim, loss, damages, expense is not covered by insurance effected by the parties each party hereby agrees to indemnify and holds harmless the other party from any and all liabilities, claims, expense or damages (including legal costs) ("Liability"), incurred as a result of a third party claim, which are cause in whole or in part, by the Customer's fault or negligence or default by the Customer in respect of any of its obligations in terms of this agreement, provided that such Liability has not been caused by the wilful or grossly negligent conduct on the part of indemnifying party.
- 6.2 Maxtec shall not be liable for any special, indirect or consequential damages arising in any manner from the Services pursuant to this agreement.
7. **Breach**
- 7.1 Should the Customer breach or otherwise be in default of any of its obligations under or in terms of this agreement and remain in default or fail to remedy such breach, if such breach is indeed capable of remedy, within 3 (three) business days of receipt of written notice from Maxtec calling upon it to do so, Maxtec will be entitled, but not obliged, in addition to any other rights which it may have or remedies which may be available to it, to cancel this agreement, with or without claiming damages, or to obtain an order against the Customer for specific performance, with or without claiming damages.
8. **General and miscellaneous**
- 8.1 Warranty. Each party represents and warrants to other party that it has the requisite power and authority to enter into this agreement and to perform its obligations herein.
- 8.2 Applicable Law. This agreement shall be governed in all respects by and shall be interpreted in accordance with the substantive laws of the Republic of South Africa.
- 8.3 Jurisdiction. The Customer hereby agrees and consents that Maxtec shall be entitled at its option to institute any legal proceedings which may arise, out of or in connection with this agreement in any Magistrates' Court having jurisdiction in terms of section 28 of the Magistrates' Court Act, 32 of 1944, notwithstanding that the claim or value of the matter in dispute might exceed the jurisdiction of such Magistrates' Court in respect of the causes of action. It is agreed however, that Maxtec shall have the right at its discretion, to institute any legal proceedings against the Customer in the High Court of the Republic of South Africa.
- 8.4 Relationship of the Parties. Except as expressly provided herein, nothing in this agreement shall be deemed to constitute a partnership or joint venture between the parties or be deemed to constitute one party as agent of the other, for any purpose whatever, and neither party shall have the authority or power to bind the other, or to contract in the name of or create a liability against the other, in any way or for any purpose.
- 8.5 Assignment. The Customer shall not assign this agreement or any part thereof to a third party or parties with the without the prior written consent of Maxtec, which consent shall not be unreasonably withheld.
- 8.6 Delays. Maxtec shall not be liable for any delay in the performance of the Services resulting from or attributable to act or circumstances beyond its control, including but not limited to, acts of God, fire, riots, labour disputes, conditions of the premises, acts or omissions of the Customer or delays caused by partners, suppliers or subcontractors of Maxtec.
- 8.7 No amendments except in writing. No addition to, variation or agreed cancellation of, or waiver of any right under this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.
- 8.8 Waivers. No relaxation or indulgence which any party may grant to any other shall constitute a waiver of the rights of that party and shall not preclude that party from exercising any rights which may have arisen in the past or which might arise in future.
- 8.9 Survival of obligations. Any provision of this agreement which contemplates performance or observance subsequent to any termination or expiration of this agreement shall survive any termination or expiration of this agreement and continue in full force and effect.
- 8.10 Approvals and consents. An approval or consent given by a party under this agreement shall only be valid if in writing and shall not relieve the other party from responsibility for complying with the requirements of this agreement nor shall it be construed as a waiver of any rights under this agreement except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this agreement.
- 8.11 Severability. Should any provision of this agreement be void, voidable or unenforceable, it shall be severable from the remaining provisions of this agreement which shall remain of full force, effect and enforceability.

