

If you are purchasing one of our Connected Services or you have received a free trial period of such services as part of your product purchase , then the following requirements shall apply, in addition to the Conditions or any other agreement signed by the parties. The applicability of any other terms and conditions is explicitly rejected and superseded by our Conditions or any other agreement signed by the parties.

CONTRACT for Connectivity Service

BACKGROUND

(A) Supplier wishes to provide the Buyer with the Connectivity Service.

(B) Buyer wishes to purchase or receive a free trial of the Connectivity Service on the requirements set out below.

(C) Supplier and Buyer further wish that the supplemental requirements set out below apply to the Conditions (set out above) and that these supplemental requirements, will jointly form the agreement (“Contract”) and are binding and enforceable provisions of this Contract.

1. Buyer obligations

1.1 Subject to the Buyer complying with (a) to (b) below, the Supplier hereby grants to the Buyer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Connectivity Service during the Subscription Term solely for the Buyer’s internal business operations.

(a) paying the required amounts as set out under the Quotation or Invoice or receiving a free trial , and

(b) adhering to the terms and conditions and requirements throughout this Contract.

1.2 The Buyer shall -

(a) use all reasonable endeavours to prevent any unauthorised access to, or use of, the Connectivity Service and, in the event of any such unauthorised access or use, promptly notify the Supplier, and

(b) make every effort to reduce the security Vulnerabilities surrounding the Registered Product, PC and network connection, and

(c) ensure that Authorised Users use the Connectivity Service in accordance with the terms and conditions and requirements of this Contract and shall be responsible for any Authorised User’s breach of this Contract, and

(d) the Buyer shall comply with the Self Install Requirements.

1.3 The Buyer shall not:

(a) except as may be allowed by any applicable law which is incapable of exclusion by Contract between the parties and except to the extent expressly permitted under this Contract:

(i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the MP Software in any form or media or by any means; or

(ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the MP Software; or

(b) access all or any part of the MP Software and Connectivity Services in order to build a product or service which competes with the Connectivity Services; or

(c) use the MP Software and or Connectivity Services to provide services to third parties; or

(d) shall not assign, sub-contract or transfer in any way with, any of its rights or obligations under this Contract , nor will Buyer be permitted to license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the MP Software and or Connectivity Services available to any third party except the Authorised Users, or

(e) attempt to obtain, or assist third parties in obtaining, access to the MP Software and or Connectivity Services, other than as provided under this clause; or

(f) introduce or permit the introduction of, any Virus into the Supplier’s network and information systems.

1.4 The rights provided under this clause 1.1 are granted to the Buyer only, and shall not be considered granted to any subsidiary or holding company of the Buyer.

2. Prices and Payment

2.1 The prices for the Connectivity Service will be as set out in the Quotation or invoice or as otherwise agreed between the parties in writing.

2.2 The Supplier will invoice the Buyer, in respect of paid for Connectivity Service yearly in advance, unless agreed otherwise. Terms of payment shall be net thirty (30) days from the date of invoice, unless agreed otherwise.

2.3 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier, the Supplier may, without liability to the Buyer, disable the Buyer’s access to all or part of the Connectivity Services and the Supplier shall be under no obligation to provide any or all of the Connectivity Services while the invoice(s) concerned remain unpaid.

3. Supplier obligations

3.1 The Supplier undertakes, during the Subscription Term, to use all reasonable skill and care to supply the Connectivity Services in accordance with this Contract.

3.2 The Supplier:

(a) does not warrant that:

(i) the Buyer’s use of the Connectivity Services will be error-free; or

(ii) that the Connectivity Services and/or the information obtained by the Buyer through the Connectivity Services will meet the Buyer’s requirements; or

(iii) the MP Software or the Connectivity Services will be free from Vulnerabilities or Viruses;

(b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Buyer acknowledges that the Connectivity Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

(c) that the Connectivity Service will be compatible with the Buyer’s information technology infrastructure and or software.

3.3 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Contract.

3.4 If there are any issues with the MP Software, that cannot be dealt with normal maintenance, then Supplier will;

(a) Issue update to the MP Software; or

(b) Terminate the Contract immediately by notice in writing to the Buyer and refund any of the monies paid by the Buyer as at the date of termination (less a reasonable sum in respect of the Buyer’s use of the MP Software to the date of termination).

3.5 Subject to the Buyer ensuring that they have complied with the Supplier Specifications and or installed any update provided by the Supplier, then the Supplier warrants an uptime of above 95% for the Connectivity Services over the Subscription Term. If Supplier is unable to provide the uptime as stated, Buyer and Supplier will liaise to discuss a credit for following Subscription Term.

4. Buyer Data

4.1 The Buyer shall own all right, title and interest in and to all of the Sample Results and are responsible for the security of its proprietary and Confidential Information.

5. Confidentiality (in addition to either our clause 18 in

our Conditions or a similar clause in such other agreement as signed by parties)

5.1 Buyer Confidential Information shall comprise of Asset Management Data. Buyer Confidential Information shall be stored securely and will never be shared, unless Supplier has a legal obligation to disclose such Confidential Information.

5.2 The Buyer acknowledges that the MP Software and information relating to the MP Software, including the results of any performance testing (which does not include Buyer data) of MP Software, constitutes Suppliers Confidential Information.

5.3 At the request of the Buyer, the Supplier shall archive Asset Management Data or erase from its computer systems (to the extent reasonably practicable) or return to the Buyer all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Buyer’s Confidential Information and Sample Results. For the avoidance of doubt this obligation does not apply to any Telemetry Data or Software Crash Data or information derived by the Supplier from analysis of the Telemetry Data or the Software Crash Data. The Supplier may retain one copy of the Confidential Information for the sole purpose of ascertaining its ongoing rights and responsibilities in respect of such information.

6. Intellectual Property Rights (in addition to either our clause 16 in our Conditions or a similar clause in such other agreement as signed by parties)

6.1 The Buyer acknowledges that all the intellectual property rights in the MP Software shall belong to Supplier or relevant third-party owners (as the case maybe) and the Buyer shall have no rights in or to the MP Software other than the right to use it in accordance with the terms and conditions and the requirements of the Contract.

6.2 Supplier shall own any intellectual property derived by Supplier from the analysis of the Telemetry Data and the Software Crash Data.

6.3. Supplier shall have no obligation or liability under this clause (and clause 16 of Conditions) insofar as the infringement arises from: (i) any additions or modifications made to Connectivity Service in question, otherwise than by MP or with its prior written consent; or (ii) the use of Connectivity Service beyond that scope established by Supplier or approved in writing by Supplier.

6.4 Without prejudice to clause 14.1 of the Conditions, this clause states the entire liability of Supplier and the exclusive remedy of Buyer with respect to any alleged infringement of intellectual property rights belonging to a third party arising out of or in connection with the performance of any Contract. This clause shall be subject to the limits of liability in clause 14.2 of the Conditions.

7. Term and termination

7.1 This Contract shall, unless otherwise terminated as provided in this clause, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Contract can be automatically renewed for successive periods of 12 months (each a Renewal Period), provided Buyer has paid monies due under Quotation or invoice, unless:

(a) either party notifies the other party of termination, by email as set out in the Supplier Specification document in the help section, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Contract shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

(b) otherwise terminated in accordance with the provisions of this Contract;

7.2 Without affecting any other right or remedy available to it, either party may terminate this Contract with immediate effect by giving written notice to the other party if:

(a) the other party fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

(b) the other party commits a material breach of any other term of this Contract and (if such breach is remediable) fails to remedy that breach within a period of 21 days after being notified in writing to do so;

(c) the other party ceases to do business, becomes unable to pay its debts when they fall due, becomes or is deemed insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or enters into liquidation whether compulsory or voluntarily

7.3 On termination of this Contract for any reason:

(a) all licences granted under this Contract shall immediately terminate; and

(b) the Buyer shall immediately cease all use of the Connectivity Services (for the avoidance of doubt, Telemetry Data and Software Crash Data will no longer be received); and

(c) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the

Contract which existed at or before the date of termination shall not be affected or prejudiced.

Liability please see clause 14 of the Conditions or similar clause in other agreement as signed by the parties.

8. DEFINITIONS – capitalised terms used but not otherwise defined herein shall have the same meaning given in the Conditions.

“Affiliates” means in the case of Buyer any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, Buyer. As used herein, the term “control” means possession of direct or indirect power to order or cause the direction of the management and policies of a corporation or other entity whether (a) through the ownership of more than fifty percent (50%) of the voting securities of the other entity; or (b) by contract, statute, regulation or otherwise. In the case of the Supplier any other entity directly or indirectly controlled by Spectris PLC.

“Asset Management Data” means all data exported to the MP Cloud by MP Software excluding the Software Crash Data and the Telemetry Data.

“Authorised Users” means the Buyer and or those Affiliates who are authorised to use the Connectivity Service.

“Connectivity Service” means an online service providing one or more of the following services:

- (a) To monitor the utilization rate of the Registered Product, which will only be viewable by Supplier’s customer services team if a problem occurs with the product, to help diagnosis of the problem. or
- (b) Supplier’s customer service team will proactively monitor the Registered Product, to provide support under the support contract purchased by Buyer for the Registered Product. , or
- (c) Buyer has access to the portal that will show their Registered Product and provide them with health status of the Registered Product.

“Confidential Information” means the Buyer Confidential Information (as defined in clause 7.2) and the Supplier’s Confidential Information (as defined in clause 7.3).

“Conditions” : Malvern Panalytical’s Terms and Conditions for the Sale and Supply of Goods and Services.

[Terms and Conditions | Malvern Panalytical](#)

“Contract” means the Contract between Buyer and Supplier arising as a result of Buyer’s submission of an order for Connectivity Services or receiving a free trial of such services and Supplier has accepted such order in writing to provide the Connectivity Services by Supplier or provided the free trial as part of a purchase of a

product. Such Contract shall be deemed to incorporate and be governed by these requirements and Conditions as from time to time varied by Supplier.

“Buyer” means the person, firm or company which places an order for the purchase of the Connectivity Service, as identified in any such order or Quotation as the case may be.

“Effective Date” means the date upon which the Buyers Registered Product is connected to the MP Cloud.

“Initial Subscription Term” means a period of 12 months from the Effective date or other such period as indicated by Supplier in relation to the free trial.

“MP Cloud” means the remote computer network and associated applications from which the Connectivity Service will be provided, which is hosted in the MS Azure environment.

“MP Software” means software owned and provided by Supplier for installation on the PC that is used by the Authorised User in association with the Registered Product.

“PC” means the personal computer that is used with the Registered Product.

“Renewal Period” the period described in 7.1.

“Registered Product” means any Supplier instrument that makes use of the Connectivity Service.

“Sample Results” means any chemical, biological, or physical properties of a Buyer provided sample as determined by a Registered Product.

“Self Install Requirements” means the document provided by the Supplier, which sets out the instructions to enable installation of the Connectivity Service on your PC.

“Software Crash Data” means an error report automatically generated by the PC used in association with the Registered Product containing:

- (a) a listing of the lines of code, which were being executed by the MP Software, when the error was encountered,
- (b) a description of the error type,
- (c) the time at which the Registered Product was being operated.

this error report will not contain any Sample Results or information from which the Sample Results could be inferred, or reverse engineered.

“Subscription Term” has the meaning given in clause 7.1 (being the Initial Subscription Term together with any subsequent renewal periods).

“Supplier” means Malvern Panalytical Limited or any of its Affiliates as named in the Quotation.

“Supplier Specification” means the document that Supplier provides to the Buyer (including the Self-Install Requirements) which sets out what technical

requirements are needed to receive the Connectivity Service.

“Telemetry Data” means:

- (a) any data describing the performance of a Registered Product's sub-components and assemblies, together with the time such data was generated.
- (b) The Registered Product's configuration, including the crystals, masks, filters, detectors, and collimators deployed.
- (c) The results of the Supplier's reference sample tests being conducted on the Registered Product, as part of the service support contract.

Telemetry Data shall not include any Sample Results or information from which the Sample Results could be inferred, or reverse engineered.

“Quotation” means a document provided by Supplier describing Connectivity Services offered to Buyer, subject to these requirements and Conditions .

“Virus” means anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

“Vulnerability” means a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.