



Terms & Conditions
for
Equipment Sales, Supply,
Support & Maintenance



WYSDOM DIGITAL TERMS AND CONDITIONS OF EQUIPMENT SALES, SUPPLY, SUPPORT & MAINTENANCE

1. **INTERPRETATION**
 - 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Confidential Information: information of commercial value which has been kept confidential by the party from whom the information originates, and which has not come into the public domain during the term of this agreement in breach of any obligation of confidence.

Defect: an error in the Software or Hardware that causes the System to fail to operate substantially in accordance with the technical specification.

Hardware: means the purchased hardware to be supplied under this contract.

Installation Date: the estimated date by which we shall begin the installation of the Hardware and Software.

Order Acknowledgement: the document sent to you upon receipt of the signed Sales Proposal/Quote confirming the making of a binding contract upon these terms and conditions.

Price: the aggregate price and payments for the Hardware, the Software, the Services, the license fee for the Licensed Software and the Support Services specified in the Sales Proposal/Quote.

Sales Proposal/Quote: means the Sales Proposal/Quote which you will be asked to sign if you intend to place an order.

Sales Order: is the Sales Proposal/Quote duly signed by you and counter-signed by the Company.

Services: the services to be provided by us as specified in the Sales Proposal/Quote.

Site: the location(s) at which the System is to be installed as specified in the Sales Proposal/Quote.

Software: the Third-Party Software.

Support Services: the maintenance services renewable annually to be provided by us under the Contract.

System: the system consisting of the Hardware and the Software.

Third-Party Software: the software programs proprietary to third parties, listed in the Sales Proposal/Quote, which are to be provided to you without modification.

We, our or us refers to Wysdom Dental Technologies Limited (the Company) a limited company registered in Scotland under number SC114467 and whose registered office is at: 272 Bath Street, Glasgow, G2 4JR

You, your: refers to the person, limited liability partnership or company placing the order for the System as identified in the Sales Proposal/Quote. If you enter into this agreement on behalf of a business, you warrant that you have the authority to contractually bind that business and the business will be our customer in the context of the agreement.
 - 1.2 A reference to one gender includes a reference to the other gender. Words in the singular include the plural and vice versa.
 - 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
 - 1.4 Except where a contrary intention appears, a reference to a clause, schedule or annex is a reference to a clause of, or schedule or annex to, this agreement.
- 1.5 Clause and schedule headings do not affect the interpretation of this agreement.
- 1.6 **Writing** or **written** includes e-mails and similar forms of electronic communication.

2. TERMS OF AGREEMENT

We shall supply

- (a) the Hardware (see clause 6);
- (b) the Services (see clause 7); and
- (c) the Support Services (see clause 9)

for the Price as specified in Sales Proposal/Quote.

The Sales Proposal/Quote forms an integral part of this agreement and any reference to **this agreement** means this agreement together with the Sales Proposal/Quote and any such amendments in writing as may subsequently be agreed between the parties.

3. BASIS OF SALE

A Sales Proposal/Quote is valid for a period of 30 days only, and we may withdraw it at any time by notice to you.

A Sales Proposal/Quote shall be deemed to be an offer to you subject to these terms and conditions. You must ensure that the Sales Proposal/Quote is complete and accurate.

A binding contract shall not be formed until we send you a counter-signed Sales Proposal/Quote **Order Acknowledgement**, or two working days after we have agreed with you the Installation Date (whichever occurs earlier).

You may not cancel this agreement once a binding contract has come into existence except with our written agreement, and, without prejudice to our right to forfeit your deposit. In any event you must indemnify us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses we have incurred prior to and as a result of cancellation.

4. QUANTITY AND DESCRIPTION

The quantity and description of the Hardware, Software, Services and Support Services shall be as set out in Sales Proposal/Quote. Except for the technical specification, all samples, drawings, descriptive matter, and advertising that we have issued, and any descriptions or illustrations contained in our catalogues or brochures are issued or published for illustrative purposes only and they do not form part of this agreement. Any typographical, clerical or other manifest error or omission may be corrected without any liability on our part.

Our employees, contractors and agents are not authorised to make any contractually binding representations. In entering into the agreement, you acknowledge that you do not rely on, and waive any claim for breach of, any such representations which have not been confirmed in writing by one of our directors. However, nothing in these conditions limits our liability for fraudulent misrepresentation.

5. PRICE AND PAYMENT

The Price is set out in the Sales Proposal/Quote. Unless otherwise

- explicitly agreed you must pay a deposit of 25% of the Price inclusive of VAT. Unless the deposit is refunded by us because your Sales Proposal/Quote is not accepted, the deposit is non-refundable and shall be used in part satisfaction of the Price due and payable to us.
- 5.2 We reserve the right, by giving you notice at any time before the Installation Date, to increase the price of the Hardware or Third-Party Software to reflect any increase in the cost to us which is due to any factor beyond our control (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture).
- 5.3 The deposit is due and payable when you sign and send us the Sales Proposal/Quote. The balance of the Price is payable a minimum of 14 days before the Installation Date. Without prejudice to any other right that we may have whether under this agreement or by law, we shall be entitled to suspend the Services and Software if the balance of the Price is not paid on time.
- 5.4 The license fee for the use of the Licensed Software and Hardware and the fee for the Support Services (including the points at which they are payable) are set out in the Sales Order. There is no charge for Support Services while the manufacturer's Warranty is in effect. Once this duration is over, you will be quoted for the service annually.
- 5.5 If we visit the Site to investigate a failure of the System, which proves in our reasonable opinion not to have been caused by a Defect, we shall be entitled to charge at our standard rates then in force.
- 5.6 The time of payment shall be of the essence of the contract. If you fail to make any payment by the due date then we shall, without prejudice to any right which we may have pursuant to any statutory provision in force from time to time, have the right to suspend the Services, and charge you interest at an annual rate equal to the aggregate of 8% above the base rate of The Bank of England from time to time, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall be calculated cumulatively on a daily basis and shall run from day to day and accrue after as well as before any judgment.
- 6. THE HARDWARE**
- 6.1 We shall supply all items of Digital & X-ray Hardware, together with all related documentation. We shall normally provide all cabling and other equipment needed for the installation of the Hardware at the Site, and, subject to clause 6.2 below this shall include any equipment needed to connect and interface the Hardware with any hardware that you already have for use with the System.
- 6.2 Our obligations to connect or interface with any of your existing hardware or equipment is subject to us being that your hardware is compatible and its connection to our Hardware will not adversely affect or compromise the proper and efficient operation of our Hardware or its reliability.
- 6.3 Following installation of each item of Hardware, we shall carry out the appropriate tests to that item. If any item of the Hardware fails to pass the tests then we shall remedy such as soon as reasonably possible, and the relevant test(s) shall be repeated.
- 7. THE SERVICES**
- 7.1 We agree to:
- (a) deliver and install the Hardware and Software at the Site;
 - (b) provide training as specified in the Sales Order.
- 7.2 We will endeavour to deliver the items of Hardware and/or Software to the Site on the agreed date however, unless we have expressly agreed otherwise in writing, we will have no obligation to do so or to complete our Services by a specified date. Time will not be of the essence in the performance of our Services.
- 7.3 If any delivery is delayed due to your acts or omissions, we may at our sole discretion increase the Price to account for any cost. We shall invoice you for any additional monies that become payable within 30 days of such.
- 7.4 You acknowledge that adequate broadband may be required, which is your responsibility to provide. If your broadband service is not adequate to allow for regular, reliable completion of cloud backups we cannot be held responsible for any data loss that may occur.
- 7.5 We cannot be held responsible for delays or inability to use the System where this is due to such causes beyond our control.
- 7.6 We undertake to provide the training at your Site as to the use of the System but we have no obligation to provide training on the use of any Third-Party Software except in so far as such training is necessary for the proper use or operation of the System. Any additional training you require shall be provided at our standard rates then in force.
- 8. The Site**
- 8.1 If appropriate, you shall, at your own expense, prepare the Site in accordance with the information provided in advance and in accordance with current specifications and confirm to us that the Site is ready. It shall be your responsibility to ensure this is complete and if on the Installation date this is not complete we reserve the right to invoice for any wasted time or costs incurred by us to remedy such.
- 8.2 You shall co-operate with us in any manner that we may reasonably require, including, but not limited to, provision of information and data, making available suitably qualified employees and contractors, provision of access to the Site for our employees and contractors and provision of supplies that we reasonably require, such as power and computer consumables.
- 8.3 You shall be responsible for ensuring that each item of your own hardware and software which has been agreed will be integrated into the System:
- (a) is of the required specification; and
 - (b) is installed and is in working order and available to us no later than the Installation Date; and
 - (c) that you have the appropriate licences to use the software and that it may be integrated into the System.
- 8.4 Acceptance of the System shall be deemed to have occurred on your use of the System in the course of your business.
- 8.5 The Software may be used only at the Site except as follows:
- (a) if you transfer the whole of your business permanently to another site provided that we are informed in writing of the change of site before use of the Software begins at the new site; and
 - (b) if the Site becomes temporarily unusable due to damage, provided that you give us notice of such alternative site.
- 9. WARRANTY, SUPPORT AND MAINTENANCE SERVICES**
- 9.1 As stated in clause 5.4, the Support Services are included within

- the price for the duration of the manufacturers' warranty. Once this expires, you will be quoted for the services annually, prior to the renewal date.
- 9.2 If you did not buy the equipment from us but opt to take out a Support & Maintenance Contract with us you will be advised of the status of your manufacturers' warranty in the Sales Order.
- 9.3 We shall ensure that support is available by telephone and e-mail during normal working hours (9am to 5.30pm UK time Monday to Thursday and 9am to 5pm on Fridays, except for bank holidays in England).
- 9.4 We shall use reasonable endeavours to correct Defects notified to us in a timely manner provided servicing is maintained in accordance with the manufacturers guarantee rules based on usage and age.
- 9.5 You shall appoint authorised personnel to perform software updates with our consent. Permitted updates include, but are not limited to, routine updates, patches, driver updates and service packs.
- 9.6 Support does not include updates to new versions of Third-Party Software or operating software unless supplied free of charge by the manufacturer/developer.
- 9.7 If and in so far as any Hardware is covered by a manufacturer's warranty, we reserve the right to have the Defect dealt with under and in accordance with the terms of that warranty.
- 9.8 We shall maintain the Hardware to the standards specified by the relevant manufacturers and only official parts shall be used.
- 9.9 All parts (and for the avoidance of doubt this does not include consumables) which may require replacement shall be replaced by us and may be chargeable. We reserve the right to charge you for the parts and labour costs associated with the repair or replacement of any of the Equipment that arises from any act or omission of you, your employees or agents or any Third-Party authorised by you and in attendance at the Site.
- 9.10 We may work at times with third-party support companies for on-site visits when required and their engineers always work under our supervision.
- 9.11 You should only install official consumables. Our Support Service will not cover failures of the hardware due to the installation and use of un-approved consumables. If this is discovered, you will be charged for our support services and any necessary hardware or software replacement.
- 9.12 **Loan Equipment** may (subject to manufacturer availability) be supplied if part of your system has a failure that cannot be repaired or restored on-site. Loan equipment is only supplied on a short-term basis until your hardware is either repaired and returned or replaced. It is your responsibility to ensure loan equipment is returned in a similar condition to when it sent and any damage to it will be chargeable. Ownership in all loan equipment will remain with Wysdom at all times.
- 9.13 You shall permit us to have online access to the Software at all times (and not only for the purpose of carrying out remote diagnostics and correction of Defects). You shall, at your own expense, provide and maintain the equipment necessary to enable such online access. Our online access is limited to the Software and we shall not access your data without your consent and then only if it is necessary to correct the Defect or test the performance of Software.
- 9.14 You shall comply as soon as reasonably practicable with all our reasonable requests for information or assistance to diagnose and

correct Defects.

10.1 **CLOUD BACK-UP SERVICES**

- 9.15 We charge for cloud-backup services on an annual basis. If you require additional cloud storage space to accommodate your backup needs part-way through the term of the agreement, we will charge for this on a pro-rata basis up to the next renewal date.
- 9.16 You must notify us of any systems you run and maintain on your Hardware in order for us to include these within the services. Once we are notified of such systems we shall include these in the regular automatic back-ups. Where we do not receive notification of such systems we cannot be held responsible for any data loss that may occur.
- 9.17 Our cloud backup service will send you email confirmation of backups plus notification of any errors. If you receive any error notifications or fail to receive emails at all you should report this to us via our support facility immediately.
- 9.18 Any changes to systems, Hardware or Software, must be reported to us immediately in order to re-confirm and/or add appropriate files within your backup setup, should this not be the case we shall have no liability for these.

10.2 **MANUFACTURER WARRANTY**

- 10.1 As far as we are able, we will pass on to you the benefits of any manufacturer's warranties. Your Hardware may fall under one of the following support structures:
- (a) Manufacturer's return to base warranty;
 - (b) Manufacturer's exchange warranty;
 - (c) Wysdom replacement warranty;
- You will be advised at the time of Proposal/Quote which warranty applies to each piece of equipment. This means that you may have to deal with the manufacturer's own support service at times.
- 10.2 If any defects appear due to no fault of yours during the manufacturer's warranty period, we will rectify any and all such Defects at no cost to you. Any Hardware supplied by us shall be subject to the extents and limits of the warranty provided to us by the manufacturer's guarantee or warranty.
- This guarantee is subject to:
- (a) payment having been received by us in full;
 - (b) you providing written notice to us upon becoming aware of any such Defect;
 - (c) you ensuring that no person modifies, adjusts or interferes with the Hardware without our prior approval. Should this occur, any problems encountered as a result will be chargeable; and
 - (d) you following all instructions issued by us.
- 10.3 We accept no liability in respect of the following:
- (a) damage due to causes beyond our control including, but not limited to, accident, neglect, misuse, faults or premature deterioration resulting from your failure to comply with our instructions;
 - (b) damage due to misuse or vandalism; or
 - (c) cosmetic damage or deterioration arising out of normal wear and tear.
- 10.4 Any repair work carried out or replacement materials supplied within the guarantee period will also be covered by the guarantee, but only for the remainder of the original guarantee period.

11.1 **MANUFACTURER'S COPYRIGHT**

- 11.1 The copyright and other intellectual property rights in the Licensed

- Software and any documentation relating thereto are and shall remain the manufacturers property.
- 11.2 In consideration for the payment of the fee described in the Sales Order, we grant you the non-exclusive, non-transferable right to use the Software on the Hardware in the course of your business subject to the terms of this agreement. You acquire no rights in or to the Software or the documentation other than those expressly granted by this agreement.
- 11.3 You may not make adaptations or variations of the Software without our prior consent. You may not disassemble, decompile, reverse translate or in any other manner decode the Software except as permitted by law. You may only operate the software in accordance with the operating procedures that we shall provide on installation of the Software and as updated by us from time to time.
- 11.4 We shall at all times own all copies of all or any part of the Software. You shall keep all copies of the Software in a secure place when not in use and shall at all times keep all such copies in your possession or control.
- 11.5 You shall:
- (a) not sub-license, rent, lend, assign or transfer in any other way the Software to anyone else without our prior written consent. If we consent to you transferring the Software to anyone else (if, for example, you sell your business), we reserve the right to charge for this;
 - (b) not permit third parties to have access to the Software without our prior written consent (we may require that such Third-Party executes a written confidentiality agreement before being given access to the Software);
 - (c) not give access to the Software through any network of computers to users who are not your employees or agents.
- 12. RISK AND OWNERSHIP**
- 12.1 The Hardware shall be at our risk until delivery to you at the Site.
- 12.2 It is your responsibility to inspect the Hardware on delivery. If you cannot do so, you must mark the delivery or other note as "not examined". We will not be responsible for any damage or shortages that would have been apparent on reasonable careful inspection.
- 12.3 In any event, you must notify us in writing within 24 hours of delivery of any alleged damage, defects or shortages so we can investigate with the delivery company.
- 12.4 Ownership of the Hardware shall pass to you (or to those through whom the acquisition of the same is being financed, if appropriate) when we have received in full in cleared funds all sums due to us.
- 12.5 Until ownership of the Hardware has passed, you shall hold the Hardware on a fiduciary basis as our bailee, store the Hardware (at no cost to us) in satisfactory conditions so that it remains readily identifiable as our property, not destroy, deface or obscure any identifying mark or packaging and keep the Hardware insured on our behalf for its full price against all risks to our reasonable satisfaction and hold the proceeds of such insurance on trust for us.
- 12.6 You hereby grant us, our agents and employees an irrevocable licence at any time to enter any premises where the Hardware is or may be stored in order to inspect them, or where your right to possession has terminated, to remove them. All costs incurred by us in repossessing the Hardware shall be borne by you.
- 12.7 On termination of the agreement for any reason, our rights under

this clause remain in effect.

13. CONFIDENTIALITY

Each Party undertakes that throughout the duration of the Contract, the Parties may disclose certain confidential information to each other. Both parties agree that they will not use the confidential information provided by the other, other than to perform their obligations under this Contract. Each Party will maintain the confidential information's confidentiality and will not disseminate it to any third party, unless so authorised by the other Party in writing.

In particular, you must not disclose details of the rates payable to us with any cleaner directly.

14. LIMITATION OF LIABILITY

Without prejudice to any specific limitation set out elsewhere in this agreement, and subject to clause 14.2, our entire liability under this agreement (including any collateral contract that is found to exist in connection therewith), for loss of or damage caused by our negligence, whether by our officers, employees, contractors or agents, shall be limited to the amount of the Price paid in the preceding 12-month period. We shall not be liable for indirect, special or consequential damages resulting from use of the System.

The exclusions in this clause 14 shall apply to the fullest extent permissible at law, but we do not exclude liability for death or personal injury caused by our negligence, or that of our officers, employees, contractors or agents for fraud or any other liability which may not be excluded by law.

Our obligations under the contract are subject to, and contingent on, the proper use and care by you of the Software, and do not cover any part of the Software which has been modified by anyone other than us, except with our express prior written permission.

We shall have no liability to rectify any particular Defect if attempts to rectify such Defect (other than normal recovery or diagnostic procedures) have been made by your personnel or third parties without our permission.

We do not warrant or guarantee that we will be able to rectify all Defects, nor that any Defect which does not materially affect your operations using the Software will be corrected.

Where the Software contains template documents and notes, these shall be for information only and are not to be relied upon. They are designed to be used as a basic foundation and must be reviewed and amended as appropriate. We shall have no responsibility where our template documents are used within clinical settings.

15. DATA PROTECTION

Any personal data we collect will be processed and held in accordance with the Data Protection Act 2018.

16. TERMINATION – SUPPORT & MAINTENANCE CONTRACT

The Contract for Support & Maintenance Services will continue to the end of the term or until it is otherwise terminated in accordance with this clause 16.

You may terminate the Contract by providing us with no less than 30 days' notice prior to the end of the then-current term. Such notice will be effective only at the end of that term.

Either party may terminate this agreement immediately by written

notice to the other party if:

- (a) the other party commits a material or persistent breach of any of its obligations under this agreement and (in the case of a breach capable of being remedied) does not remedy such breach within 30 days of receiving from the other party written notice of the breach and a request to remedy the breach; or
- (b) any distress or execution is levied on the other party's property or if the other party has a receiver, administrator, administrative receiver or manager appointed over the whole or any part of its assets, becomes insolvent, compounds or makes any arrangement with its creditors, commits any act of bankruptcy, is wound up or goes into liquidation, or if the other party suffers any analogous proceedings under foreign law.

16.4 Either party may terminate this agreement in accordance with the provisions contained in clause 18 (force majeure). 20.2

16.5 Any termination of this agreement (however caused) shall not affect any other accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuance in force of any provision of this agreement which is expressly or by implication intended to come into or continue in force on or after such termination. 21. 21.1

16.6 We shall not be liable for any loss, claims, damage, fees, liabilities, costs or expenses, whether direct, indirect, financial, economic, consequential (including without limitation loss of profit, loss of goodwill, loss of sale revenue, loss of contract and loss of opportunity) or otherwise, that you suffer as a direct or indirect result of such termination. 21.2

17. ASSIGNMENT

17.1 You shall not assign, or grant any security interest over, any of your rights or obligations under this agreement, without our prior written consent.

17.2 We may assign, or grant any security interest over, any of our rights or obligations under this agreement

18. FORCE MAJEURE

18.1 Neither party shall be liable for any delay in meeting, or failure to meet, its obligations under this agreement due to any cause outside its reasonable control including (without limitation) acts of God, war, riot, malicious acts of damage, fire, governmental acts, failure of electricity supply, strike, lock-out or labour dispute or apprehension thereof (whether or not the settlement of the matter is at the discretion of the party in question). 24.

18.2 If any delaying event under clause 18.1 continues in existence for a period of 180 days or more, either party may give the other party 30 days' written notice of its intention to terminate this agreement unless the delaying event has ended and work under this agreement has resumed. We shall be entitled to payment for all work completed prior to termination, provided that we take all reasonable steps to mitigate the amount due.

19. NOTICES

Any notice given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or e-mail to the address or e-mail address as a party may from time to time notify to the other party. A notice delivered by hand is deemed to have been served when delivered. A correctly addressed notice sent by post is deemed to have been delivered 48 hours after the

time of despatch. A notice sent by e-mail is deemed to have been delivered on the date of transmission. In proving the service of the notice, it shall be sufficient to prove:

- (a) in the case of a letter, that such letter was properly delivered or stamped, addressed and placed in the post (as the case may be); and
- (b) in the case of an e-mail, that the same was duly despatched to the current e-mail address of the addressee and no indication of non-delivery was received by the sender.

20. WAIVER

A waiver of any right under this agreement is only effective if it is in writing and signed by the waiving party, and it applies only to the person to whom the waiver is addressed and the circumstances for which it is given.

Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

21. SEVERANCE

If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

22. THIRD-PARTY RIGHTS

This agreement, and the documents referred to in it, is made for the benefit of the parties to them and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

23. ENTIRE AGREEMENT

The parties agree that this agreement and any documents identified in it constitutes the complete and exclusive statement of the agreement between them with respect to the subject matter of this agreement, which supersedes all proposals, oral or written, and all other communications between them relating to it.

24. GOVERNING LAW

This agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).