

SALES AND DELIVERY TERMS

AMFITRACK™ by Amfitech



1	INTRODUCTION		
1.1	These sales and delivery terms (the "Terms") are entered into between Amfitech A/S, Krambovej 7, 7160 Tørring, cvr no. 24231801 ("Supplier") and any customer purchasing products (as specified below) from Supplier ("Customer").		
1.2	The user manual for AMFITRACK™ is only available in English, and is always available on the website for download under "download center".		
1.3	The Terms apply for any products purchased by Customer including AmfiTrack system components and related software tools (the "Product").		
1.4	The provisions of the Terms prevail in the event of conflict between any other individual terms and the Terms.		
2	CHANGES		
2.1	Supplier may adjust and amend the Terms with a prior written notice of 90 days.		
3	THE PRODUCT		
3.1	The Products are delivered pursuant to a separate order, e-mail or similar specifying the Products including scope, quantity, and quality as well as any services and other requirements in relation hereto.		
3.2	Any orders placed by Customer are considered non-binding for Supplier unless and until Supplier has explicitly confirmed the order e.g., by an order confirmation. Thus, Supplier may at its		own discretion reject any order from Customer.
		3.3	Customer is aware and recognises that the Product may require and be comprised by specific system requirements and/or a software as further specified between the parties. Customer is responsible for complying with any such system requirements and for paying any related costs and fees.
		4	RESTRICTIONS OF USE
		4.1	Unless otherwise permitted by mandatory legislation in force Customer is expressly not permitted to:
			a) Break or circumvent any technical limitations in the Product;
			b) Reverse engineer, decompile, modify or disassemble the Products and included software etc. or use any other methods to gain access to any source code or trade secrets embodied in the Product.
			c) Amend or remove any labels and/or notices regarding copyright, trademarks or other rights, or any references thereto, included in the Product.
		5	TIME SCHEDULE AND DELIVERY
		5.1	The Product will be delivered to the agreed delivery location(s). Delivery locations must permit access which is

	reasonable, and Customer will at its own expense facilitate off-loading.		etc. included in the Product, with the restrictions specified in the Terms or separate EULA etc.
5.2	Any delivery date set out between the Parties is an estimate only and Supplier is not liable for any delay in delivery.	8	THIRD PARTY MATERIAL
5.3	Where a party is aware of or anticipates a delay in delivery, the party must promptly notify the other party of the delay and the revised estimated delivery date and loyally attempt to limit the adverse effects of the delay.	8.1	The Product may include material from a third party, typically in the form of, software including open source, hardware, data, documentation, or other such material ("Third Party Material").
5.4	If a party is prevented from performing its obligations due to circumstances attributable to the other party, that party may postpone any affected deadline by the duration of the delay.	8.2	Third Party Materials are subject to the third party's applicable terms and conditions, such terms and conditions will be made available to Customer. Any third party's terms will take precedence over the Terms and are deemed accepted by Customer as part of Customer's acceptance of the Terms.
5.5	The risk for the Product passes to Customer according to Incoterms 2020 EXW-terms.	8.3	Notwithstanding anything to the contrary, Supplier assumes no liability of any kind for any Third Party Material, including concerning defects; Third Party Material are delivered strictly "as is", and Supplier's sole responsibility is to forward any reports on defect from Customer to the third party.
6	SUB-SUPPLIERS		
6.1	Supplier may use sub-suppliers. Supplier is directly responsible for any services performed by a sub-supplier, as if provided by Supplier itself.		
7	INTELLECTUAL PROPERTY RIGHTS	8.4	This section shall apply for any Third Party Material, whether embedded in the Product or made available to Customer as a standalone service etc.
7.1	Customer acknowledges that Supplier owns all copyright and intellectual property rights or industrial property rights to the Product. Customer must respect such intellectual rights, and Customer is liable for any breach of such rights.	9	WARRANTIES
7.2	Any software and data included in the Product are standard products and delivered as is. Supplier grants a perpetual, non-exclusive, non-transferable right to any documentation, software	9.1	Supplier warrants that the Product in all material aspects will work as specified in the Terms provided that the Product is used for the intended purpose and in accordance with relevant requirements.
		9.2	The above represents the only warranties, and Supplier provides no additional warranties of any kind, neither

	explicit nor implicit. Supplier explicitly waives any warranties regarding marketability and suitability for a specific purpose.				
10	RETENTION OF TITLE				
10.1	Product is provided subject to retention of title. Supplier retains full legal title to and beneficial ownership of each Product unit notwithstanding the delivery to Customer and possession and use of the Product by Customer.	12.2			defend, indemnify and hold harmless Customer pursuant to this clause 12 for any claims submitted, or finally awarded to, a third party that the Product infringes the third party's intellectual property rights.
10.2	The retention of title remains in force until Customer has paid the total remuneration for the affected Product, including applicable interest, costs and expenses.				
11	TERMS OF PAYMENT				
11.1	Payment for the Product is due on delivery. Payment is not subject to acceptance by Customer or completion of installation, commissioning etc.	12.3			Indemnification is conditional upon Customer promptly notifying Supplier of the claim and give Supplier any reasonably requested information and cooperation and on Supplier's request, that Customer let Supplier take over the defence and sole authority to defend and settle the claim.
11.2	All prices are stated exclusive of VAT and other taxes/duties.				
11.3	Each party is responsible for its own compliance with applicable law and regulations concerning VAT and other taxes/duties.	12.4			Supplier may at its sole discretion obtain a valid license to the infringed intellectual property rights or bring an end to the infringement by modifying or replacing the Product with an alternative with materially the same functionality as the original.
11.4	Interest on overdue payments accrue in accordance with applicable law.				
11.5	Set-off against any payments invoiced by Supplier is not permitted.	12.5			Alternatively, Supplier may terminate the Terms with immediate effect against repayment of all payments without the obligation to indemnify further loss or costs.
12	INFRINGEMENT OF THIRD PARTY RIGHTS				
12.1	Notwithstanding generally applicable limitations of liability, Supplier must	12.6			Supplier's obligations do not apply if the claim or adverse final judgment is based on either Customer's non-compliance with the Terms or Customer's use of the Product etc. for purposes other than as intended and/or contrary to any instructions or restrictions on use.
		13			BREACH AND REMEDIES

- 13.1 General
- 13.1.1 The rights and remedies under applicable law are available to each party, except as otherwise limited in the Terms.
- 13.1.2 Customer must examine the Products without undue delay from the time of delivery.
- 13.1.3 Customer's remedies for breach, including for defects and delay, expires if notice hereof is not received by Supplier without undue delay after the breach was discovered or ought to have been discovered.
- 13.1.4 Supplier's liability for breach, including for defects and delay, expires no later than 6 months after the time of delivery of the Products in question and in any case no later than 6 months after the time where the breach occurred.
- 13.1.5 Notice of breach does not exempt Customer from its obligation to pay invoiced amounts when due.
- 13.1.6 When a party is notified of its breach, or itself becomes aware of its breach, the party is entitled and obligated to remedy the breach without undue delay.
- 13.1.7 Defects may at the sole discretion of Supplier be remedied by remediation or replacement.
- 13.1.8 To the extent a party fails to remedy a breach, the non-breaching party may claim damages in accordance with the Terms. A party cannot claim proportional reduction for any breach.
- 13.2 Limitation of liability
- 13.2.1 Supplier is not liable for any indirect, or consequential damages, including Customer's lost profits or revenues, anticipated revenues, operating loss, loss of goodwill, business interruption, diminished business value or loss of data.
- 13.2.2 Supplier's aggregate liability in respect of any matters arising out of or in connection with the Terms whether based on contract, indemnity, statute, equity or otherwise, is limited to DKK 25,000.
- 13.2.3 Supplier is not liable for loss or damages due to Customer's lack of training, use of the Products except as set out in the Terms and any provided documentation or due to implementation of, amendments to or interference with the Products by Customer or any third party.
- 13.2.4 The limitations of liability under this clause 13 does not limit a party's liability in relation to:
- a) losses that may not be excluded or limited according to applicable law which cannot be waived;
 - b) product liability in relation to death or bodily harm for which it is proved that the injury is due to mistakes or negligence made by Supplier;
 - c) claims submitted, or finally awarded to, a third party that the Product infringes the third parties intellectual property rights as stated in clause 12;

	d) breach of confidentiality undertakings set out in the Terms; and		
	e) gross negligence, willful misconduct or fraud.		
14	FORCE MAJEURE		
14.1	No party is in breach of any obligation to the extent and for the duration prevented from performing the obligation due to a force majeure event.		
14.2	Force majeure events include acts of God, war, mobilization, breakdown of telecommunication/ infrastructure that are not provided by Supplier, external security events (e.g. hacker attacks, attack by computer viruses or other third-party destructive behaviour) and similar conditions, health and safety restrictions and recommendations issued by public authorities, pandemics, epidemics, natural disaster, strikes, lock-out, fire, damages to production plant, import and export regulations and other unforeseeable circumstances beyond the control of the party concerned.	15.3	The confidentiality obligations do not cover:
			f) information known or which becomes known to the receiving party without obligation of confidentiality;
			g) information which is independently developed by the receiving party;
			h) information which is known to the general public.
		16	ASSIGNMENT
		16.1	The parties may only assign rights and obligations pursuant to the Terms to a third party with the other party's prior written approval.
15	CONFIDENTIALITY	16.2	Notwithstanding anything to the contrary, Supplier may, at its sole discretion, assign, novate or transfer the Terms, in whole or in part, to (a) an affiliate of Supplier or (b) to any third party if done so as part of a divestment of one or more of its entities, business units etc.
15.1	Each party must observe complete confidentiality regarding any confidential information and documentation etc. about the other party in every respect as obtained in relation to the Terms and the Product. This clause applies regardless of termination of the Terms for any reason.		
15.2	Each party may disclose confidential information to its representatives, including legal advisors, consultants etc. if the disclosure is necessary for legal advisors, consultants etc. to perform their	17	TERMINATION

17.1 The Terms cannot be terminated for convenience.

17.2 Each party may immediately terminate the Terms for cause:

- a) if the other party commits a material breach of the Terms, and the material breach has not been remedied within 60 days of receipt of a written notice from the non-breaching party to do so;
- b) if the other party is responsible for a material breach of the Terms, which is not capable of remedy; or
- c) in the event of bankruptcy of the other party, subject to the right of the bankruptcy estate to enter the Terms to the extent permitted under the Danish Insolvency Act or similar applicable law.

17.3 Customer's failure to pay any outstanding amount (except for outstanding amounts disputed in good faith) is deemed a material breach.

17.4 Termination for any reason has effect for the future only (*ex nunc*) and termination for any reason does not result in the repayment of any payments already made.

18 VALIDITY AND SERVERABILITY

18.1 If a provision in this Terms is considered illegal, invalid or unenforceable, such provision will be enforced to the maximum extent possible under applicable law, and such provision will not affect the legality or the validity of any other provisions.

19 GOVERNING LAW AND DISPUTES

19.1 The Terms is governed by and construed in accordance with the law where Supplier is domiciled except for (a) rules leading to the application of other law and (b) the United Nations Convention on Contracts for the International Sale of Goods (CISG).

19.2 Any dispute controversy or claim arising out of or related to the Terms must be settled by the Danish Court at Supplier's venue.