



Terms and Condition

2BM Mobile Warehouse

**GENERAL TERMS AND CONDITIONS - TO THE LICENSE AGREEMENT
REGARDING THE USE OF SOFTWARE FROM 2BM A/S.**

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1. DEFINITIONS

1.1 *In these terms and conditions the following words shall have following meanings:*

"2BM"	<i>shall mean [2BM Danmark A/S, CVR-no. 25627261];</i>
"MWH"	<i>shall mean the 2BM Mobile Warehouse which refers to one or more products acquired by the Customer;</i>
"Customer"	<i>shall mean the customer who has signed a License Agreement;</i>
"License"	<i>the Customers non-exclusive license for using the MWH, as set out in the License Agreement;</i>
"License Agreement"	<i>the agreement between the Customer and 2BM regarding the License;</i>
"License Fee"	<i>the agreed License Fee for the MWH specified in the License Agreement;</i>
"Support and Maintenance Agreement"	<i>shall mean the support and maintenance agreement entered between the Customer and 2BM;</i>
"This Contract"	<i>these terms and conditions together with the Licence Agreement.</i>

2. BACKGROUND

2.1 These General Terms and Conditions form part of any License Agreement with 2BM and the Customer accepts any and all rights and obligations stated herein.

3. DELIVERY

3.1 2BM supplies Mobile Warehouse (MWH), including the relevant standard documentation, in machine-readable form on appropriate electronic medium.

3.2 Unless otherwise stated in License Agreement, the latest version of the MWH released at the time of delivery is supplied.

3.3 The Customer is responsible for the installation of the MWH.

3.4 The Customer may request assistance from 2BM for installing, providing training and implementing the MWH, if so this is specified in License Agreement.

4. USE OF THE MWH

4.1 The Customer is granted a License on the terms of the License Agreement. The Customer shall not use the MWH in any other way, unless this is explicitly specified in the License Agreement.

- 4.2 The Customer is entitled to use the specified components of the MWH on the number of installations stated in the License Agreement. For each installation, permission is given to one productive system environment and an unlimited number of development and test systems linked to the productive system environment.
- 4.3 The Customer shall monitor its use of the MWH to ensure it complies with the terms of the License Agreement. Once a year the Customer shall provide 2BM with a report, stating whether or not the License is being complied with, and if the basis for calculating the License Fee, based on the terms in the License Agreement and the MWH price list, has changed. If the Customer exceeds the Customer's license set out in the License Agreement, or if 2BM can demonstrate that an additional License has been used and maintenance charge should be paid, 2BM is entitled to invoice the Customer for this in accordance with the provisions stipulated in the License Agreement.
- 4.4 Regardless of whether the Customer has the technical ability to do so or not, the Customer is not entitled to gain access to or in any other way use components of the MWH other than those which the Customer is entitled to use according to the License.
- 4.5 The Customer is, while ensuring observance of 2BM's intellectual property rights at all times as specified in Section 5, entitled to develop modifications to the MWH for its own internal use. 2BM is in no way obliged to offer support to the Customer for the Customer's modifications. Likewise, 2BM is in no way obliged to take the Customer's modifications into account during 2BM's further development of the MWH.
- 4.6 The MWH shall only be used by the Customer and its affiliates.
- 4.7 The Customer is, without 2BM's consent, only entitled to copy or reproduce the supplied version of the MWH for backup use. Copying or reproduction for any other purpose requires 2BM's prior written consent.
- 4.8 The Customer shall not, in any way or form, pass on the MWH, assign the right to use the MWH or provide access for using the MWH to any third party, except in the case of assignment covered by Section 4.6, unless 2BM gives its prior written consent
- 5. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**
- 5.1 The Customer recognizes that the right of ownership of all intellectual property rights associated with the MWH, including copyright, belongs to 2BM.
- 5.2 The Customer, while always observing 2BM's rights specified in Section 5.1, acquires any rights to the modifications to the MWH developed by the Customer. The Customer's development and use of any modification to the MWH are made at the Customer's own risk. If this development and/or use entails any loss of the MWH's functionality, 2BM disclaims any liability for this, and if this development and/or use results in maintenance being required for the MWH, this maintenance is not covered by the Support and Maintenance agreement.
- 5.3 2BM and the Customer are completely bound to secrecy with regard to information supplied by the other party. 2BM is entitled to electronically process all data supplied by the Customer and that is required in order for 2BM to supply its services under the Contract.
- 5.4 2BM and the Customer undertake not to publish or announce the existence or terms of License Agreement, without the other Party's prior written consent. Notwithstanding the above, 2BM is permitted to include the Customer in its list of references.

6. INFRINGEMENT OF THIRD-PARTY RIGHTS

- 6.1 2BM guarantees that the delivery does not infringe any third-party rights, including patents or copyrights. The Customer shall immediately inform 2BM in writing if any infringements of rights come to its attention, and shall assist 2BM, as much as necessary, during any action, in which case 2BM shall indemnify the Customer in connection with any such third-party claims, including legal fees and costs, damages and any other sums which might be awarded to the plaintiff.
- 6.2 The limitations and disclaimer of liability stated in Section 10 and Section 14 prevails over Section 6.1

7. CUSTOMER COOPERATION

- 7.1 The Customer shall, free of charge, provide all reasonably necessary support to 2BM in connection with 2BM's fulfilment of its duties in accordance with License Agreement, including but not limited to providing staff, work facilities, hardware, software, data and communications facilities, and by cooperating with 2BM, when requested to, on the delivery of the MWH.
- 7.2 The Customer shall, as far as possible, test the MWH before implementing this to its production system environment. The Customer shall also take appropriate measures to prevent functional errors, including data back-up, diagnosing errors and continually monitoring results.

8. PRICES AND PAYMENT

- 8.1 The payment terms are as stated in the License Agreement. Recurring maintenance and hosting will apply the terms stated in the License Agreement.
- 8.2 All fees and charges payable to 2BM are subject to VAT and any other applicable taxes, including taxes and charges which are to be applied as a result of changes made in legal regulations introduced after the Contract has been signed.
- 8.3 Unless otherwise agreed between the parties, any further License charges resulting from any change to or extension of the software's use are payable at the same time as the Customer establishes the change to or extension of use. Such further License charges are calculated according to the relevant list prices for MWH.
- 8.4 In the event of any delay in payment under the Contract, 2BM is entitled to charge late payment interest, equivalent to 1,5% per month entered into from the payment due date until payment is made.

9. DUTY TO EXAMINE FOR AND REPORT DEFECTS

- 9.1 The Customer is responsible for inspecting the MWH and any other kind of delivery or service provided by 2BM under this Contract and to report any defects to 2BM without undue delay. When reporting defects, the Customer must provide, as far as possible, a reasonably detailed description in writing of the problem.
- 9.2 If the Customer reports a matter as a defect 2BM is liable for, and it transpires that there is no defect or there is a defect, but 2BM is not liable for this defect, then 2BM is entitled to invoice the Customer for all work carried out by 2BM, including the investigation involved with it, based on 2BM's price list and terms applicable at the time of the work.

10. DEFECTS, DELAY AND CANCELLATION

- 10.1 Defect claims shall be registered in writing by the Customer to 2BM no later than 3 months after the delivery of the MWH. A material defect only occurs if the defect results in essential components of the MWH failing to comply with the specifications and descriptions set out in the standard documentation.

- 10.2 If a defect claim is reported within the proper time, as specified in Section 10.1, 2BM is obliged during normal working hours to remedy defects within a reasonable time after the defect has been reported. The remedial action must, as far as appropriate, involve identifying faults in the MWH and instructing the Customer on possible ways of working around the fault in order to limit operational disruption. 2BM may choose to provide a new or modified version of the MWH instead of carrying out any remedial action. If 2BM chooses to provide a new or modified version of the MWH the installation costs incurred in doing so shall be defrayed by the Customer.
- 10.3 Subject always to clause 10.3, the Customer is only entitled to cancel the Contract if there is a material defect and if 2BM has not remedied this no later than 30 (thirty) working days of 2BM receiving the claim concerning the defect. In the event of cancellation, the License Fee is refunded to the Customer for the unexpired period of the term of the License calculated from the date notice of the material defect was given to 2BM in exchange for discontinuing its use of the MWH immediately, and returning the MWH and all copies to 2BM, as well as deleting all stored software documentation of the MWH.
- 10.4 The Customer's use of the MWH is to be in accordance with the relevant documentation and any other specific instructions passed on to the Customer by 2BM otherwise 2BM disclaims any liability for defects.
- 10.5 The provisions in Section 10 specifies exhaustively the remedies for breach of contract which the Customer is entitled to in the event of any defect with the MWH and/or delay on 2BM's part. 2BM is not liable for losses suffered by the Customer as a result of any defects with the MWH and/or delays on 2BM's part. This limitation applies along with the general limitation of liability specified in Section 14.

11. TERMINATION BY 2BM

- 11.1 In the event of any breach of the Customer's obligations under these General Terms and Conditions, including in particular Sections 4, 5, 7, 8 and 16, 2BM may, provided that the Customer has received 30 (thirty) days' notice in writing to remedy the breach, terminate the Contract, after which the Customer must cease using the MWH, return the MWH and all copies to 2BM, as well as delete all stored software and documentation. The Customer must document to 2BM that the Customer has fulfilled these obligations. The Customer is not entitled to neither full nor partial refund of License Fees or of any other charges paid to 2BM as a result of returning the MWH to 2BM if 2BM terminates the contract legitimately.

12. MAINTENANCE FOR THE MWH

- 12.1 Only if the Customer has entered into a Support and Maintenance Agreement, will the Customer be granted access to support and maintenance. In case such Support and Maintenance Agreement has been entered into support and maintenance is granted in accordance with that agreement.
- 12.2 The maintenance service is only provided for the last and penultimate official standard version of MWH.
- 12.3 The Support and Maintenance Agreement may be terminated subject to 6 months' notice in writing effective at the end of a month. 2BM is not entitled to terminate maintenance within the first 2 years of the maintenance period from the date when the Contract was signed, but 2BM is entitled during this period to adjust the maintenance charge as specified below.
- 12.4 Although the maintenance charge is set as a percentage of the MWH License fee, 2BM may adjust this percentage subject to 3 months' notice in writing effective at the end of a calendar month. If, within 4 weeks of receiving notification of the adjustment, the Customer does not give notice in writing of terminating the Support and Maintenance Agreement at the end of the relevant calendar month, the Customer shall consent to the adjusted percentage. If the Customer does give notice of terminating the Support and Maintenance Agreement within 4 weeks of receiving notification of the adjustment, the original prices will apply for the remainder of the contract period.

- 12.5 If the Customer does not enter into an agreement for maintenance service immediately after delivery of the MWH, but at a later date, or the Customer cancels the maintenance and reorders it at a later date, the Customer is obliged to pay the usual maintenance charge at the time of ordering or reordering, with an additional amount equivalent to the cumulative maintenance charge for the period from the time of delivery of the MWH until the time maintenance is ordered or the period between cancelling and reordering the maintenance.
- 12.6 In the case of defects and/or any delay in 2BM fulfilling its obligations under the Support and Maintenance Agreement, the Customer's sole remedy for breach of contract is a claim for a reasonable reduction in the maintenance charges for the period during which the delay lasts or until a defect is remedied, and only to the extent where the delay and/or defect has prevented the Customer from using the MWH.

13. LIMITATION OF LIABILITY

- 13.1 2BM's liability for damages or any other claim for payment under this contract is limited to the License Fee.
- 13.2 Product liability, including the Customer's claim of recourse for compensation paid by the Customer, is limited to the License Fee.
- 13.3 2BM is not liable for consequential damage or indirect loss, including loss of earnings, profits and interest, lost savings, nor any loss of customers, contracts and goodwill. Loss of data is regarded as an indirect loss.
- 13.4 The Customer must take legal action, as stated in Section 17, with regard to claims for damages and/or an appropriate reduction, including claims for product liability, against 2BM no later than 3 (three) months after the time when the circumstances which gave rise to the claim came or should have come to the Customer's knowledge. If the Customer does not observe this timeframe the Customer's claim must be regarded as abandoned and lapsed.

14. FORCE MAJEURE

- 14.1 Neither party shall be responsible or liable to the other party hereunder for failure or delay in performance of The License Agreement or the General Terms and Conditions, due to any war, fire accident or other casualty or any labour disturbance or Act of God, natural catastrophe or Acts of the Public enemy or any other contingency beyond such parties control. In the event of the applicability of this article, the party affected by such force majeure shall use its best effort to eliminate, cure and overcome of such causes and resume performance of its obligations.

15. ASSIGNMENT

- 15.1 2BM may, without the Customer's consent, assign 2BM's rights under the License Agreement and/or the Support and Maintenance Agreement to a third party. Furthermore, 2BM may wholly or partially allow 2BM's obligations to be fulfilled by subcontractors. 2BM's use of subcontractors does not exempt 2BM's from the duty of fulfilling the Contract with the Customer.
- 15.2 The Customer cannot, without 2BM's prior consent, assign the Customer's rights under the Contract to a third party.

16. DISPUTES AND GOVERNING LAW

- 16.1 As 2BM's Support Center for MWH is headquartered in Denmark and is responsible for the designing, development and delivery of the MWH software and all second level support of the MWH products, this Contract is subject to and shall be interpreted in accordance with Danish law.
- 16.2 Any dispute, disagreement or claim arising out of or in connection with this Contract, or breach, notice to terminate or invalidity of the Contract must be settled by arbitration in accordance

with the Rules of Procedure of the Danish Institute of Arbitration (Copenhagen Arbitration). Each party appoints one member of the arbitration tribunal, while the chairman of the arbitration tribunal is appointed by the Institute of Arbitration. If a party has not appointed a member of the arbitration tribunal within no more than 30 days of having requested or received notice of the arbitration, the relevant member is appointed by the Institute of Arbitration, in accordance with the above-mentioned Rules. Notwithstanding the above, 2BM, based on 2BM's own decision, is entitled to institute legal proceedings or request a dispute to be handed over for settlement by the general courts or by the Maritime and Commercial Court in Copenhagen.

- 16.3 The court of jurisdiction must be in Copenhagen. Unless otherwise agreed between the parties, proceedings at the arbitration tribunal will be conducted in English and the decision of the Arbitration Court shall be rendered in English.

17. AMENDMENTS TO THE CONTRACT

- 17.1 The Contract may only be amended by written agreement between the Customer and 2BM.

18. ACCEPTANCE

- 18.1 These General Terms and Conditions becomes effective upon the Customers' acceptance of the terms stated herein, hereunder by initiating any download, installation, copy or any other form of use of any part of the MWH or, upon signing of written License Agreement between the parties making the General Terms and Conditions part of the License Agreement.

19. SEVERABILITY

- 19.1 Should any provision of this Agreement be invalid, ineffective, or unenforceable, under present or future laws, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

20. NOTICE

- 20.1 Notices to 2BM shall be in writing to the following address;

2BM A/S
Livjærgade 17
2100 København Ø
Denmark

21. ENTIRE AGREEMENT

- 21.1 The Customer acknowledges that it has read the License Agreement and these General Terms and Conditions and agrees that it is the complete and exclusive statement of the agreement between the Parties.

Any questions to this agreement shall be directed to:

2BM A/S
Livjærgade 17
2100 København Ø
Denmark