



**GENERAL TERMS AND CONDITIONS**  
**MobaXterm Professional Edition**  
Version dated September 11, 2018

## 1. FIELD OF APPLICATION

The present general conditions (the "**General Conditions**") define the conditions under which the company MOBATEK, a limited liability company with a capital of € 3.000 whose registered office is located at 15 chemin de la Crabe, 31300 Toulouse - FRANCE, registered with the Trade and Companies Register of Toulouse under no. 502.869.258 ("**MOBATEK**"), will grant the Customer (collectively the "**Parties**") a License or several Licenses to the Software and will provide the relevant Update.

These General Conditions shall apply automatically and in full to any License and Update Order made on the Website and shall prevail over any purchase conditions of the Customer which are unenforceable on MOBATEK.

## 2. DEFINITIONS

Under these General Conditions, the terms listed hereinafter shall have the following meanings:

- Customer:** means any physical or legal person, acting as Consumer or not, who has placed an Order.
- Order:** means the Customer's acquisition of one or more Licenses to the Software and/or the associated Update from MOBATEK.
- Consumer:** means any physical person who acts for purposes which are not within the scope of his/her commercial, industrial, craft, liberal or agricultural activity.
- Personal Data:** means any information related to an identified or identifiable physical person.
- Customer Area:** means the interface reserved for Customers and accessible to the latter by means of the access codes provided by MOBATEK during the Order Confirmation, in order to enable them to access the page containing the download link as well as the Software License key.

<b>Force Majeure:</b>	means an event beyond the control of a party which could not be reasonably foreseen by the latter at the time of the conclusion of the present agreement and the effects of which cannot be avoided by appropriate measures, including in particular blockage, disruption, congestion of telecommunication networks, poor quality of electricity, natural disasters, lightning, flooding, extreme weather, acts of terrorism, fire, explosions, earthquakes, war, insurrections or disturbances of public order, strikes and labor disputes of any kind, acts or decisions of the government or other relevant regulatory authorities, or compliance with them.
<b>License:</b>	means the license to use the Software granted by MOBATEK to the Customer.
<b>Software:</b>	means the "MobaXterm Professional Edition" software published by MOBATEK.
<b>Update:</b>	means the corrective and upgrading update service for the Software provided by MOBATEK to the Customer within the framework of an Order.
<b>Website:</b>	means the website operated by MOBATEK accessible at the address <mobatek.net>, as well as its sub-domains <mobaxterm.mobatek.net>, <download.mobatek.net>, <blog.mobatek.net> and <ccc.mobatek.net>.

### 3. SOFTWARE LICENSE CONDITIONS

#### 3.1. Description of the Software

The Software includes many features that allow the user to access and manage remote computing environments within a single application running on a Windows operating system.

In particular, the Software allows its user, via a tabbed terminal:

- to remotely manage several distance sessions (SSH, RDP, VNC, XDMCP, FTP, SFTP, etc.);
- to have an X server, and various network tools (packet manager, port analysis, SSH tunnel, etc.);
- to remotely control computers running Unix and Windows operating systems.

Detailed specifications of the Software and its features are presented on the Website.

While ensuring the greatest care and accuracy in the information posted online relating to the Software, MOBATEK shall not be held liable in the event of non-substantial errors contained in said information, which the Customer acknowledges and accepts.

Customers further recognize having received from MOBATEK sufficient information to ensure the compatibility of the Software with their equipment (hardware, configurations, etc.) and the suitability of its features to their needs as determined by themselves. MOBATEK will not be held responsible in the event of incompatibility of the Software with the equipment and/or the needs of the Customer, which the Customer acknowledges and accepts.

### **3.2. Conditions of use**

The License is granted per end user (physical person) and not per computer.

The Customer is therefore obliged to purchase a number of Licenses equal to the number of end users (physical persons) who are required to use them, even in the case of non-simultaneous use.

Consequently, and by way of example:

- The Customer is authorized to purchase a single License to use the Software when used by a single end user, even if it is installed on three different computers.
- The Customer must purchase fifty Licenses to use the Software if it is used by fifty end users, even if installed on a single computer.

### **3.3. License duration**

MOBATEK grants the Customer an irrevocable right to use the purchased Software version, even if the Customer does not renew the Update service at maturity.

### **3.4. Intellectual property**

The Software and each of its components (such as its structure, organization and source codes) and its documentation available on the Website are protected worldwide by the intellectual property rights and personality rights in force or any other law, and are, unless otherwise stated, the exclusive property of MOBATEK or are used with the authorization of their holder or under a License agreement.

Nothing in this License shall be construed as expressly or implicitly conferring any intellectual property rights of any kind with respect to the Software, its components and/or its content.

### **3.5. Updates**

Pursuant to Article 4 General Conditions herein, MOBATEK may release new versions of the Software in order to improve it, remove or add new features or resolve bugs from earlier versions.

Any new version of the Software will replace the previous version and remains subject to this License, as well as to these General Conditions.

### **3.6. Verification**

MOBATEK is entitled to verify at any time that the Customer complies with this License.

As a result, Customers (company or physical person) who have placed their Order as a corporation agree to:

- implement internal procedures to prohibit any copy, distribution or unauthorized use of the Software;
- keep a folder describing the installed, copied or used Software;

- provide to MOBATEK, at its request, a written certification of the versions and the number of installed Software;
- allow a MOBATEK representative or an independent auditor to inspect and audit the Customer's computers and the above-mentioned record, during normal business hours, and on reasonable notice of ten (10) days, to verify that the use of the Software complies with the provisions of this License.

In the event that an audit reveals that the audited Customer installs or uses (or has at any time installed or used) the Software for a greater number than the Software purchased, MOBATEK shall be entitled to invoice the Customer for the supplementary Licenses at a price equal to three (3) times the normal price of the License.

### 3.7. Third-party components and plugins

The Customer acknowledges and agrees that the Software uses the following third-party components that are distributed under their own Licenses:

- Jedi VCL (<<http://jvcl.delphi-jedi.org>>, <<http://jvcl.sourceforge.net>>), under License MPL v1.1,
- Graphics32 (<<http://graphics32.org>>) under License MPL v1.1,
- DCPCrypt (<<http://www.cityinthesky.co.uk/>>) under License MIT,
- SynEdit (<<http://sourceforge.net/projects/synedit>>) under License MPL v1.1,
- LanManager Unit (<<http://www.delphi-jedi.org/>>) under License MPL v1.1,
- MobaFont (<<http://dejavu-fonts.org>>) under License MobaFont,
- FastMM (<<http://fastmm.sourceforge.net>>), under License MPL v1.1,
- TChromeTabs (<<https://github.com/norgepaul/TChromeTabs>>) under License MPL v1.1,
- Crystal Clear Icons (<<http://www.everaldo.com/crystal>>) under License LGPL v2.1,
- Oxygen Icons (<<https://github.com/pasnox/oxygen-icons-png>>) under License LGPL v2.1,
- Nuvola Icons (<<http://www.icon-king.com/projects/nuvola/>>) under License LGPL v2.1,
- Drag and Drop (<<http://melander.dk/delphi/dragdrop/>>) under License MPL v1.1,
- MoTTY, based on PuTTY (<<http://www.chiark.greenend.org.uk/~sgtatham/putty/>>) under License ZPL,
- Simon Tatham Puzzle games (<<http://www.chiark.greenend.org.uk/~sgtatham/puzzles/>>) under license MIT,
- Dlfcn-win32 (<<https://github.com/dlfcn-win32/dlfcn-win32>>) under License LGPL v2.1,
- Libwinpthread (<<http://sourceforge.net/projects/msys2>>) under License ZPL,
- Mesa (<<http://www.mesa3d.org>>) under License MIT,
- MinGW-w64-runtime (<<http://mingw-w64.yaxm.org>>) under License Mingw-w64 runtime,
- GCC runtime (<<https://gcc.gnu.org>>) under License GCC runtime library exception,
- MobaX, based on Xorg (<<http://www.x.org>>) under License ZPL.

Some additional plugins may be used to enhance the Software, which are also distributed under their own Licenses, which the Customer recognizes and accepts. These plugins can be consulted at <[mobaxterm.mobatek.net/plugins.html](http://mobaxterm.mobatek.net/plugins.html)> or through the MobApt Package Manager available within the Software.

### **3.8. Permissions**

#### **3.8.1. Right of analysis**

The Customers and/or end users (physical persons) on whose behalf they act, have the right to observe, study or test the functioning of the Software in order to determine the ideas and principles which are the basis of the Software, when performing the loading, display, execution, transmission or storage of the Software.

#### **3.8.2. Right of decompile or disassemble**

The Customer and/or end users (physical persons) on whose behalf they are acting are authorized to decompile or disassemble the Software, reproduce the code or translate the form of the Software Code for the sole purpose of making the Software interoperable with other software; the decompile or disassemble of the Software for any other purpose being formally prohibited.

However, before performing any act of decompile or disassemble, the Customer shall inform MOBATEK of his/her intention. MOBATEK will then have a period of fifteen (15) days to confirm its consent according to the intentions of the Customer. The Customer must therefore formally refrain from any act of decompile or disassemble during this period.

#### **3.8.3. Backup copy**

The Customer and/or end users (physical persons) on whose behalf he/she is acting, are authorized to each make a single copy of the Software for backup and archiving purposes only and on condition that any copy of such identification mark and any intellectual property rights notice as may appear on the original software will be reproduced on this copy.

### **3.9. Restrictions**

Subject to the aforementioned authorizations and the reservations provided for hereinafter, the Customer and/or the end users (physical persons) on whose behalf he/she acts, is/are not authorized and may not authorize third parties to:

- cede the Software without the express prior written consent of MOBATEK;
- use, copy, or transfer the Software except as expressly permitted by this License;
- distribute the software without the prior express consent of MOBATEK;
- rent, lend, sub-License or otherwise deal in the Software;
- translate the Software;
- remove, change, hide any identifying mark or any intellectual property rights or other proprietary notices in the Software;
- modify, adapt, merge, disassemble, decompile the Software in any way.

This list is merely indicative and not exclusive of any act of the Customer and/or end users (physical persons) on whose behalf he/she acts, which could infringe the ownership rights of MOBATEK.

## **4. SOFTWARE UPDATE CONDITIONS**

### **4.1. Description of the Update service**

MOBATEK provides a Software update service to the Customer

MOBATEK will make available to the Customer any updates to the Software that may be published by MOBATEK, to improve the Software, remove or add new features, or resolve some bugs from earlier releases.

MOBATEK will provide to Customers, on their dedicated page of their Customer Area, an electronic download link and a license key for any new version of the updated Software, identifiable by means of a new identification number; accompanied by a presentation of the new features and functionality of this new version, which will also be presented on the MOBATEK blog accessible at the address *<blog.mobatek.net>*.

MOBATEK reserves the right to accept or reject any modifications of the Software including in the event of an explicitly deferred malfunction. Furthermore, MOBATEK reserves the right to add and the right to remove features of the Software.

### **4.2. Duration of the Update service**

The Update service is by default valid for a period of one (1) year from the date of receipt of the Order Confirmation. The Customer can request to have a longer Update service by contacting MOBATEK.

In the sixty (60) days prior to the expiry of the term of the Update service, MOBATEK will send e-mails to the Customer asking if he/she wishes to renew this service for an additional one (1) year.

The e-mail will mention the price of the renewal and the terms of payment.

In the absence of an express renewal of the Update service, it will automatically terminate and the Customer will no longer have access to the page containing the download link as well as the License key of the Software on the Customer Area. The Customer will therefore be required to download the Software and retain his/her License Key in the event of a subsequent installation of the Software upon expiration of the Update service.

## **5. ORDER**

### **5.1. Order Placement**

In order to place an Order, the Customer shall be invited to visit the Website accessible at [mobaxterm.mobatek.net/subscription.html](http://mobaxterm.mobatek.net/subscription.html), then to select from the drop-down list created for this purpose:

- country of domicile;
- the preferred currency, Euro (EUR) or Dollar (USD);
- the capacity under which the Customer purchases the Software, either as an individual or corporation.

Where the country stated is a member country of the European Union, and the Customer indicates otherwise acting as a legal entity, the Customer is also requested to provide his/her intra-Community VAT number if he/she has such a number.

The Customer is then asked to indicate the quantity of Licenses he/she wishes to purchase as part of his/her Order; it being specified that the Customer is obliged, in accordance with the terms of the License, to purchase a number of Licenses equivalent to the number of end users (physical persons) required to use them, even if not used simultaneously.

Finally, Customers are asked to enter into the invoice form provided for this purpose, their identity and their contact details (company name, first name, last name, postal address, city, postal code, country, e-mail address) so that MOBATEK can prepare the invoice corresponding to their Order and send by e-mail the Order Confirmation to the contact details given in this way.

If the Customer wishes the Software to be downloaded by another person or at a different address than the one indicated on the billing form, the Customer is also requested to complete the end-user form provided for this purpose.

At any time during the execution of the Order, and in particular after completing all the aforementioned forms, the Customer acknowledges that it is possible for him/her:

- to obtain detailed information about the Software that is the subject of the Order;
- to check the quantity of Licenses ordered and their unit price;
- to verify the total amount of his/her Order, depending on the quantity of Licenses ordered and any applicable taxes.

### **5.2. Order Validation**

After having verified their Order summary as well as the accuracy of the information indicated in the forms provided for this purpose, Customers must, in order to finalize their Order, take note of these General Conditions and declare acceptance of them without restriction or reserve by clicking on the check box provided for this purpose.

The Customer must then choose to:

- proceed directly to the Order payment, by clicking on the "*Buy Now*" button (an "**Instant Purchase**"); or
- request a quotation corresponding to the Order, by clicking on the button "*Request a quote*" (a "**Quotation Request**").

#### **5.2.1.** Instant Purchase

In the case of an Instant Purchase, Customers are redirected to the online payment platform PayPal, in order to carry out the cash payment of their Order.

Customers are then invited to choose (depending on his/her country and as defined by Paypal):

- to log into and make the payment through PayPal, or
- to pay directly by credit or debit card.

In the latter case, the Customer must fill in the PayPal form provided for this purpose, entering the information relating to his/her credit or debit card (card number, expiry date, security code, first name and surname of the holder), billing address (postal address, city, postal code, country) and contact information (telephone, e-mail).

After verifying the total amount of the Order and the accuracy of the information entered into the PayPal form, the Customer must, in order to validate the Order, make the payment by clicking on the "Pay" button. The Customer acknowledges that with this click, he/she authorizes PayPal to debit the total amount of his/her Order from his/her credit or debit card or PayPal Account, as the case may be.

By express agreement, payment of the Order implies the Customer's full and complete acceptance of these General Conditions.

#### **5.2.2.** Quotation Request

Within the framework of a Quotation Request, the Customer receives as soon as possible, at the electronic address provided during Order placement, a quotation corresponding to his/her Order (the "**Quotation**"), which notably includes the applicable taxes and charges in accordance with Article 6 of these General Conditions.

Any Quotation is valid for the period indicated in the latter and failing that for thirty (30) days following its date of issue.

The Customer must send to MOBATEK, during the corresponding validity period, the signed Quotation or a purchase order containing the Quotation information to the e-mail address indicated therein.

By express agreement, acceptance of the Quotation implies the Customer's full and complete acceptance of these General Conditions.



### 5.3. Order Confirmation

After payment of the Order has been confirmed by PayPal with MOBATEK in the context of an Instant Purchase, or after the Purchase Order has been received and accepted by MOBATEK, an e-mail (the "**Order Confirmation**") is sent to the Customer within twenty-four (24) to forty-eight (48), to the e-mail address provided by the latter when placing the Order. No physical documents / media will be sent by postal way.

The Order Confirmation contains in particular:

- the Order invoice (the "**Invoice**");
- the access codes to the Customer Space, and thus to the page containing the download link as well as the Software License key.

Within the framework of a Quotation Request, the Customer has a period of thirty (30) days from the date of receipt of the Order Confirmation to pay the total amount of his/her Order, by bank transfer to the account of MOBATEK whose references are indicated in the Invoice.

Failing receipt of the Order Confirmation within the aforementioned time limits, the Customer is invited to contact MOBATEK customer service in accordance with Article 10 hereof, after having ascertained that the Order Confirmation ~~was~~ is not filtered as spam or junk in his/her e-mail system.

The Customer must also notify MOBATEK Customer Service immediately by the contact details mentioned in Article 10 of these General Conditions, of any errors and/or omissions contained in the Order Confirmation.

By retaining the Order Confirmation and/or by printing it, Customers hold a proof of the Order which MOBATEK recommends that they keep. In addition, the Customer has the possibility to access the history of his/her Order and the corresponding Invoice by simple request to MOBATEK customer service in accordance with Article 10 hereof.

### 5.4. Order Delivery

#### 5.4.1. Delivery Mode

In addition, Customers have the option to access their Order history and the corresponding Invoice by simple request to MOBATEK customer service during Order Confirmation.

Failing this, or in the event of problems accessing the page containing the download link of the Software or if the download link provided is not functional, the Customer is invited to contact MOBATEK customer service in accordance with Article 10 hereof.

#### 5.4.2. Delivery Zone

Subject to the following paragraph and Article 5.4.3 hereinafter, the Software may be ordered by any Customer from anywhere in the world to the extent that he/she is not subject, at the date of these General Conditions, to an export restriction that requires a license.

However, the Software may not be ordered for Customers domiciled in countries subject to US embargo at the date of the Order. It is Customers' responsibility to verify, before any Order, that they are not domiciled in such a country. By using the Software, the Customer represents and warrants not being domiciled in such a country.

#### **5.4.3. Export limits**

Due to its dual-use nature, which may include both civilian and military uses, the Software may be subject to national and international export control laws and regulations.

In the event that the Software is subject to an export restriction, MOBATEK may refuse the Order of a Customer who is domiciled in a country covered by said restriction.

The Customer also undertakes to comply with all applicable national and international laws and regulations concerning the Software, in particular with regard to export control.

The Customer acknowledges that he/she is liable for any damage caused to MOBATEK in the event of non-compliance with said regulations.

## **6. PRICE AND PAYMENT CONDITIONS**

### **6.1. Price**

The prices of the Software License and the corresponding Update service are those indicated on the Website page accessible at the following address [mobaxterm.mobatek.net/subscription.html](http://mobaxterm.mobatek.net/subscription.html).

These prices are indicated, according to the Customer's choice, in euros (EUR) or in dollars (USD), and exclude taxes or charges if applicable.

The VAT potentially invoiced by MOBATEK according to the capacity of the Customer, natural person or legal entity and its country of domicile, is provided for in the relevant Order.

For all Customers domiciled outside the European Union, the price of the Order will be calculated without tax, each of these Customers being responsible for the declaration and payment of VAT, customs duties, local taxes, import duties or other taxes payable in their country.

For any Customer having made a Quotation Request, an additional fee justified by the method of payment used, amounting to twenty (20) euros or thirty-five (35) dollars according to the currency of payment preferred by the Customer, are charged by MOBATEK in case of payment by bank transfer.

MOBATEK reserves the right to change its rates at any time and without incurring any liability. This amendment will come into force on the date of publication of the new rates on the Website. MOBATEK also reserves the right to pass on any new taxes or charges that it may be required to collect or pay in connection with the sale of the Software Licenses and the corresponding Maintenance.

Any prices, taxes and fees invoiced to the Customer by MOBATEK are those in effect on the Website and in these General Conditions on the day the Order is placed.

## **6.2. Payment Conditions**

To settle their Order, Customers have the following means of payment:

- Credit or debit card (those accepted by PayPal including Visa, MasterCard, American Express, Discover) and PayPal account as part of an Instant Purchase,
- Bank transfer as part of a prior Quotation Request.

Payments by any other means (cheques, cash, etc.) are not authorized by MOBATEK.

Customers guarantee MOBATEK that they have the necessary authorizations to use the method of payment they chose when validating their Order.

In the framework of an Instant Purchase, MOBATEK delegates management of the Order payment process to its online payment service provider PayPal. The security of payment is based on the confidentiality of all the data provided by the Customer to PayPal during the payment process. To ensure this security, PayPal uses reputable encryption techniques and complies with the various applicable banking regulations.

In the context of a prior Quotation Request, the Customer may make the payment by bank transfer. In this case, management of the Order payment process is carried out by the Customer's bank.

In this way, no banking information concerning the Customer is transmitted via MOBATEK. In addition, MOBATEK cannot be held liable in the event of problems related to payment by bank transfer, credit or debit card or the PayPal account used during the payment process, which the Customer acknowledges and accepts.

Whatever the payment method chosen by the Customer, MOBATEK reserves the right to suspend the License or the Update service in progress and in particular to block the Customer's access to his/her Customer Area and thus to the page containing the download link of the Software under the conditions set out in Article 14 of these General Conditions, in the event of delay or total or partial default of payment at maturity of any sum that may be owed by the Customer to MOBATEK.

## **6.3. Charges and taxes**

All costs incurred in connection with payments (such as taxes, compulsory levies, customs clearance fees, withholding tax and bank charges) directly charged to the Customer and invoiced in their country or through intermediaries shall be borne solely by the Customer.

If the law requires the Customer to deduct or withhold taxes on sums due under the License or Update service (such as withholding tax), the amounts owed by the Customer, identified by the latter, shall be increased accordingly, in such a way that the MOBATEK shall receive an amount equal to the amount it would have received without such a deduction or withholding.

In the event of late payment of sums owed by the Customer beyond the stipulated period of payment, late payment penalties shall be automatically owed by the Customer, without any formalities, at a rate equal to that charged by the European Central Bank for its most recent refinancing operation increased by 10 percentage points and applied to the whole of the amounts due including all taxes.

In addition, the Customer in a delayed payment situation will automatically owe, in respect of MOBATEK, a lump sum indemnity for recovery costs of € 40. If the recovery costs incurred are greater than this amount, MOBATEK may request additional compensation upon justification.

## **7. RIGHT OF WITHDRAWAL**

In addition to the guarantee provided for in Article 13.1 of these General Conditions, a Customer having the status of Consumer has a period of fourteen (14) clear days to exercise his/her right of withdrawal on his/her Order without having to justify reasons or pay penalties, with the exception of any refund fees applied by PayPal or by the bank to MOBATEK. This period runs from the date of receipt of the Order Confirmation.

To exercise its right of withdrawal, the Customer must inform MOBATEK of its decision by means of an unequivocal declaration or of the form below, before the expiry of said period, using the contact details mentioned in Article 10 of these General Conditions.

The Order reimbursement is made as soon as possible and at the latest within fourteen (14) days following the date on which the right of withdrawal has been exercised. Reimbursement shall be made, as far as possible, via the same method of payment as that used for the Order, i.e. payment into the Customer's PayPal account or into the bank account used at the time of payment.

This right of withdrawal for the benefit of any Customer having the status of Consumer is conditional on the uninstallation/destruction/termination of use of the Software ordered. For this purpose, MOBATEK may request notification from the Customer in writing of its commitment to destruction as a precondition for withdrawal.

### Withdrawal form:

I hereby notify you of my withdrawal concerning the Order referenced below:

Order no. \_\_\_\_\_, covering \_\_\_\_\_ Software License(s)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

E-mail: \_\_\_\_\_

## 8. PERSONAL DATA

### 8.1. Processing of personal data collected

To execute the Order, MOBATEK is obliged to collect, via forms, personal data concerning the Customer. If the Customer does not wish to provide the information requested by MOBATEK and marked with an asterisk (\*) as being mandatory, MOBATEK will not be able to process the Customer's Order. MOBATEK commits itself to collect only Personal Data strictly necessary to the execution of an Order and therefore these General Conditions.

The personal information collected shall be subject to computer processing intended for MOBATEK, and are necessary for recording, processing and tracking Orders. These collected Personal Data are treated in accordance with the "loi informatique et liberté" of 6 January 1978 of French law, and with the General Data Protection Regulation (GDRP) 2016/679 of the 27<sup>th</sup> of April 2016, taking into force on the 25<sup>th</sup> of May 2018.

Collected Personal Data are deleted after three (3) years from the end of the business relationship. MOBATEK can proceed to an archiving of certain Personal Data to answer legal or regulatory obligations. These Personal Data are deleted when the reasons justifying the conservation is no longer necessary or appropriate.

In accordance with the legislation, the Customer has a right of access, of rectification to personal data concerning him/her. The Customer has also the right of opposition, for legitimate reasons, object to the processing of data concerning him/her when these Personal Data are not essential to the execution of an Order and these General Conditions, and also has a right of his/her Personal Data portability.

The entire Personal Data is stored inside the European Union. MOBATEK will inform the Customer in case of an incident related to the Personal Data.

Any Customer who proves his/her identity may exercise his/her rights of access, modification, deletion or portability of his/her Personal Data, by contacting MOBATEK using the following contact details:

By the contact form: [<mobaxterm.mobatek.net/contact.html>](mailto:mobaxterm.mobatek.net/contact.html)

By e-mail: [contact@mobatek.net](mailto:contact@mobatek.net)

By post: MOBATEK SARL  
Personal data  
15 chemin de la Crabe  
31300 TOULOUSE  
FRANCE.

These Personal Data may be disclosed to MOBATEK's third-party technical service providers, involved in the progress of the Order (including the PayPal online payment service provider) who engaged themselves to treat them as per MOBATEK's instructions, only for the (final) purpose of their task, also guaranteeing their confidentiality, security and conservation.

On the other hand, this information shall in no way be provided to third parties providing non-technical services such as external marketing or advertising companies.

## **8.2. Accuracy of information provided**

The Customer undertakes to provide up-to-date, complete and accurate information in the forms provided for this purpose when placing and validating the Order and agrees to update this information as soon as possible after they change, directly from his/her Customer Area or through MOBATEK customer service using the contact details specified in Article 10 of these General Conditions.

MOBATEK shall not be held liable in any way whatsoever if the information provided by the Customer, in particular during Order placement and validation, is inaccurate, incomplete or obsolete and/or does not allow MOBATEK to process his/her Order, and/or leads to a delay in the delivery of the Order Confirmation; which the Customer acknowledges and accepts.

## **9. SECURITY AND ACCESSIBILITY**

### **9.1. Access codes**

The access codes provided to the Customer by MOBATEK during Order Confirmation are strictly confidential and therefore must not be disclosed to third parties, other than employees or workers who need to know them as end users (physical persons), in accordance with Article 12 herein.

Customers are entirely responsible for their access codes and any activity taking place in their Customer Area. Customers agree to immediately notify MOBATEK of any unauthorized use of their Customer Area or any other breach of Website security that they may have knowledge of.

MOBATEK shall not be held liable for any damage suffered by the Customer as a result of use by any other person of his/her access codes and/or his/her Customer Area, whether or not the Customer has knowledge of this use; which the Customer acknowledges and accepts. The Customer's liability may be incurred if MOBATEK or third parties suffer damage resulting from use by any other person of his/her access codes and/or his/her Customer Area.

MOBATEK reserves the right to change all or part of the Customer's access codes, for technical or security reasons. The Customer will then be informed by e-mail.

### **9.2. Accessibility of the Website and the Customer Area**

The right of access and use of the Customer Area is strictly limited to the duration of the current Update service.

However, the Customer acknowledges and agrees that access to his/her Customer Area and therefore to the page containing the download link and license key of the Software:

- may be suspended and removed by MOBATEK under the conditions set out in Article 14 of

these General Conditions,

- will be automatically removed by MOBATEK on the expiry date of the Update service, unless renewed under the conditions set out in section 4.1 herein.

The goal of MOBATEK is to provide access to the Website and to the Customer Area twenty-four (24) hours a day, seven (7) days a week (7).

However, access to the Website and the Customer Area may be suspended at any time and without notice, in particular as a result of accidents, breakdowns or paralysis of the network, as well as the necessary maintenance and correction operations for updating and maintaining the Website and the Customer Area; which the Customer acknowledges and accepts.

MOBATEK shall inform the Customer, to the extent possible, of the existence and duration of the suspension. MOBATEK shall endeavor to carry out such maintenance and correction operations at times when the Website is least used; it being specified that impossibility of access to the Customer Area does not interfere in any way with use of the Software.

MOBATEK shall take reasonable security measures to ensure the physical protection of the Website and the Customer Area. The Customer undertakes not to impede access to and the proper functioning of the Website and the Customer Area in any way whatsoever, especially by means of fraudulent computer activities capable of damaging them.

MOBATEK shall not be held liable for any events or damages beyond its control which could arise and which could damage the Customer's computer environment used to access the Website and the Customer Area.

## **10. CUSTOMER SERVICE**

In the event of problems with the Order, problems of access to the page containing the Software download link or if the download link provided is not functional, the Customer is invited to contact MOBATEK customer service using the following contact details:

By the contact form: <[mobaxterm.mobatek.net/contact.html](http://mobaxterm.mobatek.net/contact.html)>

By e-mail: [contact@mobatek.net](mailto:contact@mobatek.net)

By post: MOBATEK SARL  
Customer Service  
15 chemin de la Crabe  
31300 TOULOUSEFRANCE.

## 11. INTELLECTUAL PROPERTY OF THE WEBSITE

The Website and each of its components (such as texts, photographs, trademarks, logos, illustrations, animations, graphic representations, diagrams, videos, domain names, source codes, etc.) are protected worldwide by the intellectual property rights and personality rights in force or any other law, and are, unless otherwise stated, the exclusive property of MOBATEK or are used with the authorization of their holder or under a License agreement.

Reproduction of any material published on the Website is authorized solely for the purposes of information for strictly personal, domestic, educational and private use and provided that no change is made to the Website content and that the trademarks and components protected by a copyright are kept intact.

However, reproductions of the MOBATEK logo, screenshots and descriptions of the Software available on the Website are permitted, provided that the source is clearly and legibly marked as follows: "*This document originates from the website <mobaxterm.mobatek.net>. Reproduction rights are reserved and strictly limited.*" The internet address of the Website must be included in the reference. For any other use, the express and prior agreement of MOBATEK must be requested.

Any other use of all or part of the Website and/or its contents, in any way whatsoever, including by download, reproduction, transmission, representation, distribution, display, dissemination, integration to a derivative work and any copying of this content for other purposes, in particular public and/or commercial purposes or any alteration of the whole or part of the Website are strictly forbidden, save with the express and prior consent of MOBATEK.

Nothing in these General Conditions and, where applicable, in any Special Conditions shall be construed as conferring any License or any other right to the Website, its components and/or its content, either explicitly or implicitly.

## 12. CONFIDENTIALITY

Each of the Parties is obliged:

- to keep confidential any information considered as such that it may receive from the other Party in the execution of these General Conditions (the "**Confidential Information**");
- not disclose the Confidential Information of the other party to any third party, other than employees or agents who need to know them as end-users (physical persons) and, consequently, to undertake to ensure compliance with this commitment by the latter
- to use the Confidential Information of the other party only to exercise its rights and fulfill its obligations under these General Conditions.



### **13. GUARANTEE AND LIABILITY**

THE TERMS OF THIS ARTICLE APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE MANDATORY REGULATIONS. MOBATEK PROVIDES THE CUSTOMER WITH THE PROTECTION AND ADVANTAGES PROVIDED BY ANY REGULATIONS OR ANY APPLICABLE LEGAL GUARANTEE.

#### **13.1. Guarantee**

For a period of thirty (30) days from the date of receipt of the Order Confirmation, MOBATEK guarantees the Customer that the Software shall function correctly and be executed in accordance with the documentation provided on the Website, when used as directed by MOBATEK.

This warranty shall not apply if the failure of the Software results from failure to comply with the conditions of use prescribed by MOBATEK, modification of the Software and its technical characteristics, abnormal use, viruses, negligence or accident or where the version of the Software used is not the latest version available.

In order to assert its rights under this guarantee, the Customer must explain in detail to MOBATEK the defect found and enclose with his/her request a proof of purchase of the defective Software.

The liability of MOBATEK and Customer's exclusive remedy under this guarantee is limited, at the option of MOBATEK, to:

- replacement of the defective Software (by providing a new download link for the Software in the Customer Area if available), or
- refund of the price paid on the Order for the purchase of the afore-mentioned Software.

Any replaced Software is covered by this warranty for the remaining period of the original warranty.

The Software shall be reimbursed as soon as possible and no later than thirty (30) days after the date on which the right to the guarantee has been exercised. Reimbursement shall be made on the proposal of MOBATEK by payment into the Customer's PayPal account or into the bank account used at the time of payment.

#### **13.2. Liability**

Any implied guarantee, including any guarantees of merchantability or fitness for a particular use or purpose, is limited by the express guarantees of these General Conditions.

MOBATEK shall in no event be liable to the Customer or any third party for the occurrence of any indirect damage whatsoever resulting from computer viruses and/or related in particular to the use of the Software, the Website or the internet, Customer Area, such as loss of profits, data or information of any kind, uncompleted savings, trouble or action directed against the Customer by a third party, even if MOBATEK has knowledge of the possibility of such damages, which the Customer acknowledges and accepts.

Concerning provision of the Update service, the obligations of MOBATEK are obligations of means, and in no case of result.

In any circumstances, the liability of MOBATEK to the Customer for direct damages (whether these damages have a negligent or contractual cause) may not in any case exceed the amount of the price paid by the Customer for the License giving rise to the action.

Finally, the liability of MOBATEK may under no circumstances be sought for any use of the Software contrary to these General Conditions or any applicable national and international laws and regulations, as well as in case of fraudulent use of the Software by the Customer.

## **14. SUSPENSION - TERMINATION**

### **14.1. Termination for breach**

In the event of a breach by the Customer of one of his/her contractual obligations as defined in these General Conditions and, where applicable, the Particular Conditions, not repaired within eight (8) days following a written notice of default in question, MOBATEK may automatically terminate the current License(s) and the associated Update service, without any formality, and without prejudice to any damages and interest which MOBATEK may claim.

### **14.2. Suspension**

In the event of a breach by the Customer of one of his/her contractual obligations as defined in these General Conditions not repaired within eight (8) days following a written notice of failure in question, MOBATEK may suspend the License(s) in progress and the associated Update service, and in particular block the Customer's access to his/her Customer Area and thus the page containing the Software download link.

MOBATEK may re-initiate access to the License and the Associated Update service subject to full and complete reparation for the breach that gave rise to the suspension.

### **14.3. Subsistence**

The expiration or termination of the License or the Update service shall in no way affect the rights or obligations of any party under any provision of these General Conditions by its meaning and context, intended to subsist after such expiration or termination, including in particular by virtue of Articles 3.3, 3.4, 11, 12 and 13.

## **15. FORCE MAJEURE**

In case of occurrence of a Force Majeure event, fulfillment of the obligations assigned by the latter shall be automatically suspended, with the party concerned being obliged to inform the other party in writing as soon as possible after the occurrence of the event.

In the event of Force Majeure of more than sixty (60) days, the License or the Update service will automatically terminate without compensation of any kind whatsoever.

## **16. GENERAL PROVISIONS**

### **16.1. Non-waiver**

The fact of MOBATEK not exercising or enforcing or delaying exercise of any right or provision of these General Conditions shall not constitute a waiver of such right or provision. Any waiver shall be effective only if it is expressed in writing by MOBATEK.

### **16.2. Autonomy**

If any of the provisions of these General Conditions are found to be unnecessary or without object and/or void or unenforceable under any legal or regulatory provision or judicial decision that has become final, such provision shall be deemed to be unwritten and interpreted in compliance with the applicable legislation to reflect the initial intentions of MOBATEK, without invalidating the other provisions.

### **16.3. Entirety**

These General Conditions and any rules or instructions published online regarding the License and the Software Update shall constitute the entirety of the applicable contractual arrangements between the Customer and MOBATEK.

### **16.4. Amendments**

MOBATEK reserves the right to amend the present General Conditions at any time, without notice, and in its sole discretion. In addition, the General Conditions applicable to the Customer will be those in force at the time of Order placement.

### **16.5. Cession**

Unless otherwise authorized by MOBATEK, the Customer is expressly forbidden to assign or transmit to any third party, even gratuitously, all or part of the rights and/or obligations that it holds of these General Conditions.

MOBATEK is entitled to assign, transfer or otherwise dispose of its rights and obligations under these General Conditions, in whole or in part, at any time and without notice.

## **17. APPLICABLE LAW**

THE PRESENT GENERAL CONDITIONS AS WELL AS PURCHASE AND SALE OPERATIONS RESULTING THEREFROM ARE EXCLUSIVELY REGULATED BY FRENCH LAW, without application of the rules relating to conflicts of laws and this regardless of the country of execution of the Order.

## **18. DISPUTES**

### **18.1. Complaints**

For any complaint concerning his/her Order, the Customer is invited to contact MOBATEK customer service using the contact details specified in Article 10 of these General Conditions.

### **18.2. Mediation**

In the event of a persistent problem that has not been resolved by MOBATEK customer service, Customers having the status of Consumer may have recourse to any competent mediation service which will try, independently, to reconcile the Parties in order to reach an amicable solution.

In accordance with Article 14 of Regulation (EU) No 524/2013, the European Commission has set up an online dispute resolution platform accessible at the following address <<https://webgate.ec.europa.eu/odr/>>, to collect any complaints from Consumers following an online purchase and then forward them to the competent national mediators.

### **18.3. Competent courts**

In the absence of an amicable agreement between the Customer and MOBATEK, and for any dispute of whatever nature to which these General Conditions and the resulting purchase and sale transactions give rise, THE PARTIES EXPRESSLY RECOGNISE THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE REGISTERED OFFICE OF MOBATEK, INCLUDING FOR PREVENTIVE PROCEEDINGS, EMERGENCY PROCEEDINGS, INTERLOCUTORY PROCEEDINGS, INTRODUCTION OF THIRD PARTIES, APPLICATION OR MULTIPLE RESPONDENTS.