

CONDITIONS

These terms and conditions will be valid for all bookings made from **May 2023**.

1. INTERPRETATION

1.1 Reference to **“you”** or **“your”** are references to the Customer.

Reference to **“we”**, **“us”** or **“our”** are references to MSIP.

Reference to **Business Day** means any working day (other than a Saturday, Sunday or public holiday) when banks in Edinburgh are open for business.

Reference to **“Business Hours”** means between the hours of 9am and 5pm on any Business Day.

Reference to **“Conditions”** means these MSIP terms and conditions as amended from time to time in accordance with clause 10.3.

Reference to **“Contract”** means the contract between MSIP and the Customer for the supply of Services in accordance with the Online Booking Form and these Conditions.

Reference to **“Maker Space”** means the product development and prototyping laboratory which may be booked by the Customer subject to the provisions these Conditions and the payment of the Maker Space Booking Fee. The Maker Space is to be used for product research and development purposes only. The manufacture of products for sale is specifically excluded.

Reference to **“Maker Space Training”** means the standard training sessions conducted by MSIP from time to time which must be undertaken by all Lab Users prior to their use of the Maker Space.

Reference to **“Maker Space Booking Fee”** means the then standard MSIP rates for the booking of the Maker Space.

Reference to **“Facilities”** means the Lab; Shared Space and to any other premises MSIP may permit the Customer access.

Reference to **“Lab User”** means any of your employees, consultants, agents or other authorised individuals accessing the Lab booked by you.

Reference to **“Lab”** means the laboratory space provided by MSIP to you under the terms of the Contract.

Reference to **“Mandatory Induction”** means the completion by all Lab Users of the standard MSIP health and safety induction for the Facilities.

Reference to **“Restricted Materials”** means (i) any hazardous; flammable; corrosive; or explosive materials; and (ii) any equipment that requires specialist training or could reasonably be anticipated to cause damage or harm to other users of the Facilities. This list is not exhaustive and is dependent on the HSE key regulations of CoSHH, DSEAR, COMAH, Ionising Radiation and Environmental protection Act.

Reference to **“MSIP Equipment”** means any tools, equipment, software or materials provided by us for your use.

Reference to **“Shared Space”** shall mean the areas of MSIP premises (excluding the Lab) you have access to communally with other MSIP customers and staff.

Reference to **“Services”** means the services and Facilities described and set out in the Online Booking Form to be supplied by us to you.

In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

2. BOOKING PROCEDURE AND BASIS OF THE CONTRACT

- 2.1 MSIP will allocate laboratory space which materially conforms with the Lab Type definition in the Online Booking Form.
- 2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied in the course of dealing.
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of MSIP which is not set out in the Contract.

3. MSIP GENERAL PROVISIONS

- 3.1 MSIP reserves the right to refuse a Booking if it is clear that (i) the nature of the Booking is such that it may give rise to any adverse publicity or would adversely impact on the image or reputation of MSIP or bring MSIP into disrepute; (ii) the Booking is made in relation to a Customer or project which goes against the MSIP Vision and Mission (<https://www.msipdundee.com/our-parc/>). In addition, notwithstanding that MSIP has accepted a Booking, MSIP reserves the right to cancel a Booking, without penalty or any liability, where it becomes clear that either (i) the nature of the Booking; or (ii) the conduct of the Lab Users; is not considered by MSIP (in its sole discretion) as being appropriate.
- 3.2 You acknowledge that MSIP will not allow access to the Facilities of any Lab User who has not completed the Mandatory Induction.
- 3.3 MSIP shall have the right to withdraw the use of the Services at any time if in the opinion of MSIP that the Customer has misrepresented the purpose of the Booking.

- 3.4 The Customer may not sub-let or further offer for hire the Lab, Shared Space or any other associated MSIP services.
- 3.5 MSIP shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and MSIP shall notify the Customer in any such event.
- 3.6 MSIP reserves the right to exclude or eject Lab Users whom it reasonably considers to be objectionable.
- 3.7 MSIP reserves the right to refuse the Customer's use of Restricted Materials in the Facilities for any reason.
- 3.8 In the event any Lab User is required to use the Facilities outside Business Hours, the Customer will (i) notify MSIP 24 hours in advance of such access; and (ii) ensure that all Lab Users comply with the MSIP code of practice in relation to lone working.
- 3.9 The Customer agrees to indemnify MSIP in respect of all costs, expenses and others arising from the breach by the Customer of the obligations under this contract.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
- (a) ensure that the terms of the Online Booking Form and any additional information it provides to MSIP at any time in relation to the Services are complete and accurate;
 - (b) co-operate with MSIP in all matters relating to the Particular Premises or the Services;
 - (c) By agreeing to these Terms and Conditions, Customers agree that the work conducted within the MSIP Innovation Labs is consistent with MSIP Vision and Mission and will not adversely affect MSIP reputation (<https://www.msipdundee.com/our-parc/>). provide MSIP with such information as MSIP may reasonably require in order to allow the Customer and Lab Users access to the Facilities or to provide the Services, and ensure that such information is accurate in all material respects;
 - (d) appoint a Customer representative, who shall be the first point of contact for MSIP in respect of the provision of the Services;
 - (e) ensure that all Lab Users have completed the Mandatory Induction, Safety Health and Environment Induction, and not allow access to the Facilities to any Lab User who has not completed the Mandatory Induction; and
 - (f) ensure that all MSIP Equipment is only used by competent Lab Users and in accordance with standard practice;
 - (g) Ensure that all Lab Users will respect the Building Manual and Rules.
- 4.2 If the performance by MSIP of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (a "Customer Default") then:

- (a) MSIP shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the failure or delay to perform the Services; and
- (b) the Customer shall reimburse MSIP on written demand for any costs or losses sustained or incurred by MSIP arising directly or indirectly from the Customer Default.

4.3 The Customer will ensure that its Lab Users comply with the MSIP Code of Conduct, Building Manual and Rules, at all times.

4.4 The Customer shall ensure, by the End Date, that it shall remove from the Facilities anything which the Customer has brought into the Facilities and shall ensure that Lab is left clean, undamaged and free from rubbish. MSIP shall be entitled to charge the Customer for any cleaning or removal costs caused by the Customer or the Lab Users. The Customer shall pay such charges within 14 days of receipt of invoice. The Customer acknowledges that MSIP may remove and destroy any items left by the Customer after the End Date and MSIP will have no liability to the Customer in relation to the same. For the avoidance of doubt this will include any padlock or security device removed by MSIP after the End Date.

4.5 No additions or alterations to the Lab may be made without the written consent of MSIP. No Restricted Materials may be brought into the Facilities without the prior written consent of MSIP.

4.6 The Customer shall ensure that there is no interference whatsoever with fire extinguishers or any other fire-fighting equipment except in the case of an emergency. The Customer must ensure that there is no interference with fire doors and doors fitted with automatic closures. The Customer shall ensure that every corridor, passage and exit of the premises of MSIP being used is kept tidy and clear of obstruction and ready for use in an emergency.

4.7 The Customer shall not do (or fail to do anything) which would vitiate in whole or in part any insurance effected in respect of the Facilities in place from time to time.

4.8 The Customer shall not use MSIP's Logo on any part of its advertising or publicity without the prior written approval of MSIP.

4.9 The Customer acknowledges that it is solely responsible for the security of its Lab via padlock or other security device.

5. CANCELLATION POLICY

5.1 All bookings shall be paid for monthly in advance and are non-cancellable unless in accordance with the terms of the Contract. All sums paid by the Customer to MSIP are non-refundable unless otherwise detailed in the Contract.

5.2 In addition to any rights specifically stated in the Contract, MSIP reserves the right to cancel the provision of the Services to the event and cancel any rights granted in respect of the Facilities without any liability if:

- (a) Any of the MSIP premises are closed for reasons beyond the control of MSIP;
- (b) The Customer is in arrears with any payment (whether in respect of this arrangement or any other arrangement) due to MSIP;
- (c) The Customer is in breach of any of the Contract;

- (d) The Customer becomes insolvent or enters liquidation or receivership or is subject to any similar process or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- (e) Where the Customer is an individual where the Customer becomes bankrupt or dies; or
- (f) Where MSIP is of the opinion that the Services cannot proceed as intended due to, or the MSIP premises cannot comply with, a change in circumstances or in regulations made by the Scottish or United Kingdom Government in relation to an epidemic or pandemic.

5.3 In the event that a change in circumstances, or a change in law or guidance is caused by the Scottish or United Kingdom Government which would cause the Booking to be, in the opinion of MSIP, non-compliant with current Coronavirus or other pandemic laws or guidance as amended from time to time, MSIP reserves the right to cancel or amend the Booking to remedy such non-compliance without liability.

5.4 Where a Cancellation occurs under Clause 5.2 (a); 5.2 (f) or 5.3, MSIP will provide a pro rata refund to the Customer based on the number of days the Customer has had access to the Facilities.

6. CHARGES AND PAYMENT

6.1 All Charges shall be due ~~monthly in advance with the first month paid and paid~~ at the time the Booking ~~is made and before the Customer takes occupation~~.

6.2 All Charges shall be in pound sterling. Time for payment shall be of the essence of the Contract.

6.3 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being ("**VAT**").

~~6.36.4~~ Invoices will be issued monthly in advance with payment terms of 5 days.

6.46.5 Without limiting any other right or remedy of MSIP, if the Customer fails to make any payment due to MSIP under the Contract by the due date for payment (the "**Due Date**"), MSIP shall have the right to charge interest on the overdue amount at the rate of five (5) per cent per annum above the then current Royal Bank of Scotland's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

7. LIABILITY

7.1 The Customer shall be liable on demand for any damage caused by its Lab Users to the Facilities or MSIP Equipment throughout the period that the Services are provided to the Customer. The cost of restoring the Facilities to their original condition shall be assessed by MSIP whose decision is final. No screws or nails shall be pushed/driven into walls, floors or ceilings of the premises, fixtures and fittings.

7.2 MSIP shall not be held responsible for any damage or loss of goods, property or equipment or for personal injury (except in the case of negligence by MSIP) on the premises or land of MSIP howsoever caused. The Customer shall indemnify MSIP against any claims, which may be made in respect thereof. Any accident must be reported to MSIP as soon as possible after its occurrence.

- 7.3 The Customer shall effect and maintain adequate insurance to cover all liabilities under the Contract, with a reputable insurer and shall make copies of such insurance policies and renewal receipts and make them available to MSIP on request.
- 7.4 Nothing in these Conditions shall limit or exclude the liability of MSIP for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.5 Subject to clause 7.4:
- (a) The Customer shall indemnify and keep indemnified MSIP against all claims, actions, losses, damages, costs and expenses which may be brought against or incurred or suffered by MSIP as a result of the Customer's use of the Facilities.
 - (b) MSIP shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (c) The total liability of MSIP to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges actually received for the relevant Booking.
- 7.6 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 7.7 This clause 7 shall survive termination of the Contract.
- 8. ALLOCATION OF LABS AND MAKER SPACE**
- 8.1 The Customer acknowledges that MSIP may require the Customer to relocate to a different Lab during the provision of the services. MSIP shall give the Customer 48 hours' notice of any requirement and shall only move the Customer to an alternative Lab with the same or similar facilities.
- 8.2 The Customer may book the Maker Space via email to Info@MSIPDundee.com subject to availability and payment of the Maker Space Booking Fee. The Customer warrants that all Lab Users accessing the Maker Space will have completed the Maker Space Training prior to access. MSIP will have no liability and will not issue a refund of the Maker Space Booking Fee, in the event the Customer cannot make use of its Maker Space booking due to Lab Users not having completed the Maker Space Training.

9. HEALTH AND SAFETY

- 9.1 The Customer must take instructions from MSIP's representatives for the duration of the Booking and in particular they shall procure that they (and any of the Lab Users) shall follow any directions in respect of health and safety and social distancing including where required by MSIP's representative instructions in respect of the evacuation of the building.
- 9.2 The Customer shall procure that its Lab Users follow the health and safety policy in respect of the Facilities.

10. GENERAL

10.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of MSIP including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of MSIP or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, epidemic or pandemic, or default of suppliers or subcontractors.
- (b) MSIP shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents MSIP from providing any of the Services in terms of the Contract, MSIP shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

10.2 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

10.3 *Variation*: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by MSIP.

10.4 *Governing law and jurisdiction*: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Scots law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Scotland.