

# GENERAL SALES AND SERVICE PROVISION CONDITIONS

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## Article I. SCOPE

The general sales conditions herein constitute, in accordance with Article L 441-6 of the Code of Commerce, the single basis for the commercial relationship between the parties. They govern the sale of products (hereafter referred to as the "Products") and the provision of services (hereafter referred to as the "Services") by Macnica ATD Europe. (Hereafter referred to as the "Vendor"). These general conditions (hereafter referred to as the "Conditions") shall take precedence over the Customer's general conditions, and over any additional conditions or conditions which contradict the Conditions herein, with said conditions hereby being excluded. Acceptance by the Customer is governed solely by the general conditions herein. Starting to process the order or delivery thereof cannot be considered as constituting acceptance of the Customer's additional or contradictory general conditions. Acceptance, by the Customer, of the delivery of the Products and/or the Services provided by the Vendor shall be deemed as acceptance of the Conditions herein. The Vendor reserves the right to the transfer, to a third party, the rights and obligations resulting from the conditions herein, after having informed the Customer thereof.

## Article II. ORDER - OFFER

All orders issued by the Customer will be subject to written acceptance from the Vendor. The sales contract becomes definitive once acknowledgement of receipt of the Customer's order by the Vendor has been issued, or by the signing of a technical assistance contract or service package. It is the Customer's responsibility to ensure the accuracy of their order and their specifications, and to provide any relevant information within a sufficient time period to enable the Vendor to perform the contract resulting in the delivery of the Products/Service provision. The Vendor may, at their own discretion, allocate the given Products among their Customers. The Vendor reserves the right to make changes to the specifications of any Product and/or any Service provision, made necessary by their compliance with safety requirements, specific applicable legal provisions or European requirements or, if the Product to be supplied has to meet Product specifications, to make changes which will not essentially affect the Product's performance, nor have the effect of altering the manufacturer's product specifications.

The price of the Products is that agreed upon acceptance, by the Vendor, of the order issued by the Customer, and confirmed on the invoice drawn up by the Vendor for the corresponding Products. The Price of an undelivered Product may also be increased in cases where there has been an increase in the Vendor's costs or currency exchange rate fluctuations, or changes in the market conditions, labour costs, raw materials or other industrial costs, as well any changes to the manufacturer's price lists or discounts, or in any other circumstances beyond the reasonable control of the Vendor. Unless otherwise indicated by the Vendor or the quote/offer, the quotes or offers are valid for a period of 30 days. At the end of this period, the Vendor may change said quotes without prior notice.

Unless agreed otherwise in writing by the Vendor, all the prices indicated in the quotes and offers are understood to be exclusive of transport and insurance costs, duties, and taxes, specifically Value Added Tax (VAT). The Customer undertakes to pay these taxes, unless the Vendor agrees in writing that the sale is exempt thereof. The Customer must guarantee the Vendor against any obligation to pay taxes in relation to the sale and against any obligation related to the collection or withholding of these taxes, specifically any corresponding penalties and interest. Where necessary, the transport costs and taxes will be detailed on the Vendor's invoice under separate headings.

The prices and information provided in the catalogues and price lists

are given for information only and do not render the Vendor liable. The latter reserves the right to make any changes they deem necessary.

The delivery and/or installation obligation only covers the equipment indicated on the order for which an acknowledgement of receipt has been issued, to the exclusion of any other.

## Article III. CHANGING OR CANCELLING ORDERS

Orders can only be cancelled or re-scheduled with the Vendor's written agreement. The Vendor can designate certain Products as being non-cancellable products and, for which, the delivery date cannot be changed ("NCNR - non-cancellable, non-reschedulable") or Customer specific products ("C/S - Customer Specific"). In this case, the sale of these Products will be subject to the specific conditions detailed in the Vendor's Contract for Special Products, which will take precedence over and supersede any condition which is contradictory to the terms and conditions stipulated in the Conditions herein or elsewhere. If, once provision is already underway, the Customer wishes to make changes in writing to the quantity or characteristics of the equipment and/or the service requested, the prices and deadlines provided may be reviewed as a consequence and can only be validated after written acceptance from the Vendor. For any order cancellations by the Customer, the amounts paid as a deposit will remain the property of the Vendor as a termination indemnity. Furthermore, the Vendor reserves the right to claim reimbursement from the Customer for all the costs incurred and to reject the change to the order already being processed.

## Article IV. SOFTWARE

The software is the machine-readable (object code) version of Information Technology programmes ("software"). The Vendor or the publisher retain all the industrial and intellectual property rights for the software delivered or installed on the equipment or used under the technical assistance contracts. No element in the contract herein can be interpreted as granting the rights or a user licence for any software (where appropriate) or any other intellectual property whatsoever which is connected to the Products, nor for any purpose whatsoever which is not expressly stated in a licence contract signed by the Vendor. However, depending on the type of software, the Vendor may be required to sign a specific software user licence for the customer. On the other hand, the Vendor grants the Customer a non-exclusive user licence for the software included on the equipment.

## Article V. CLAIMS - ACCEPTANCE/RETURNS

The customer is responsible for carrying out visual checks on the state of the packages received, upon receipt thereof. They are also responsible for refusing to accept any damaged packages directly from the carrier if they deem necessary.

Furthermore, any differences identified in the quantity shipped must be notified in writing to the Vendor within five days following receipt of the Products. If the quantity shipped is in excess, the customer can either return the Products to the Vendor at the Vendor's cost, or they can keep the Products (subject to an adjustment of the price on the invoice to take into account the additional items).

Any return of the Product must be carried out in accordance with the Vendor's Product return rules and authorisation procedures ("RMA - Return Merchandise Authorisation") and will generate the applicable restocking costs. The returned Products must be in their original packaging. The return of part of an order does not release the Customer from their obligations to pay the due agreed invoices. Returned equipment will be replaced or repaired by the manufacturer unless the price thereof is refunded or deducted from subsequent invoices.

#### Article VI. DELIVERY AND/OR COMMISSIONING PERIOD

The customer acknowledges that the delivery dates indicated by the Vendor are estimates only and that the Vendor cannot be held liable for delivery delays or failures to meet corresponding obligations if said delays or failings are attributable to events outside the reasonable control of the Vendor, and the carrier cannot be considered as an agent of the Vendor. In the case of a delay attributable to an event of this type, the delivery period will be extended to a period equal to the time lost as a result of the delivery delay. Said extension cannot lead to any liability or penalty whatsoever being borne by the Vendor. The delivery period is not a determinate element of the contract. If the Products are destroyed or damaged while they are in the hands of the carrier, the Vendor will be considered to have completely fulfilled their contractual obligations. If the Products and/or Services have to be delivered in a staggered manner, each delivery will constitute a separate contract and, if the Vendor does not carry out one or several of the staggered deliveries, in accordance with the Conditions herein, or there is any claim by the customer concerning any one of the staggered deliveries, this shall not authorise the customer to refuse the subsequent deliveries.

Delays cannot, in any case, be used to justify the cancellation of the order, nor constitute grounds for penalties, damages or interest. The Vendor cannot be held liable for any commitment relating to the delivery and/or commissioning period in the following cases:

- The payment conditions have not been followed by the Customer.
- The information to be provided by the Customer did not arrive within the desired time.
- Case of force majeure.
- Preparatory work to be undertaken by the Customer not completed in good time.
- Non-compliance with the environment and commissioning conditions which the Customer is deemed to be aware of.
- Changes made by the Customer to the size or nature of the work.

#### Article VII. COMMISSIONING AND TRAINING

The commissioning of the equipment, if included in the service provision, comprises two phases.

The first phase consists of sending to the person responsible, at the end of the work and on the same day, all the information required to operate the equipment properly (skills transfer) on the condition that said person is present at the end of the services being implemented, which will have been planned and accepted by the customer previously. If the person responsible at the Customer's end was not present and the Customer wishes to organise another meeting for the transfer of skills, this may be subject to an additional charge. A second, costed, training phase may be carried out at the Customer's request for personalised explanations and specific programming.

#### Article VIII. CONFIDENTIALITY AND SOFTWARE USER LICENCE

The customer is prohibited from contacting any of the Vendor's customers or suppliers regarding the Products or Services bought from the Vendor, unless otherwise agreed, and must preserve the confidential nature of the conditions of the contract concluded between the parties, and must not disclose them to any third parties.

#### Article IX. PERSONAL DATA PROTECTION

In accordance with the Law of Information Technology and Freedoms of 6 January 1978, amended by Law No 2018-493 of 20 June 2018, the customer has the rights of access, amendment, portability, opposition and rectification of their personal data. By agreeing to the general sales conditions herein, the Customer consents to the Vendor collecting and using their data for the contract performance herein. The Customer may, provided they produce valid proof of identity, exercise their rights by contacting our dedicated team by email at the following address: [privacy@atd.fr](mailto:privacy@atd.fr).

By entering their email address on one of the Vendor's sites, the Customer will receive emails containing information and promotional offers concerning the products published by the Vendor and their partners. The Customer may unsubscribe at any time. To do so, the Customer only needs to send an email to the Vendor at the following address: [privacy@atd.fr](mailto:privacy@atd.fr).

#### Article X. TECHNICAL ASSISTANCE AND ADVICE

The Vendor may provide, for free, technical assistance or advice concerning the use of the Products or Services distributed.

The Vendor cannot be held liable for the content of the technical assistance or the advice, nor for the use the customer makes thereof, and any statements made by a representative of the Vendor concerning the Products or the Services cannot constitute a declaration of guarantee, neither expressly nor implicitly. The Vendor's employees or agents are not authorised to make declarations concerning the Products or Services, unless confirmed in writing by the Vendor and signed by one of the Vendor's management team. The customer acknowledges that they will not rely on any declaration of this type which is not confirmed. Any misprint or other error or omission, in any commercial document, pricing, quote or on any invoice, may be corrected without the Vendor being liable.

#### Article XI. PAYMENT CONDITIONS

The vendor's payment conditions are, unless especially agreed otherwise, and even if the implementation of the order has given rise to a claim or a dispute: 30 Days net from invoice date.

The Vendor may invoice each shipment separately and each shipment will therefore be considered as an individual and separate contract. The customer undertakes to pay the Vendor's invoice in full, without any deduction or any compensation.

In the event of late payment, penalties for an amount equal to three (3) times the legal interest rate will be applied automatically starting from the due date, without any prior notice, up until full payment is made of the amounts due.

Furthermore, a lump sum for the recovery costs, for a fixed amount of forty (40) Euros will be due by the Customer, automatically and without prior notice.

In the case of late payment, the Vendor will no longer be obliged to continue processing the order, nor to continue implementing the work provided for in the contract to deliver the Products/provide the Services, or provided for in any other contract concluded with the customer, and in the case of a failure by the Customer to meet any of their obligations to the Vendor whatsoever, or if the customer omits to pay for the Products/Services supplied, the Vendor may, without prejudice to other avenues of recourse which may be at their disposal, suspend or terminate the contract for the Products/Services concerned.

The vendor reserves the right to demand from the Customer additional compensation if the recovery costs effectively incurred exceed this amount, upon presentation of supporting documents.

#### Article XII. GUARANTEES AND LIMIT OF LIABILITY

(a) The Vendor guarantees the customer that, at the time of delivery, the Products will comply with the specifications applicable to the Products, as produced by the manufacturer of said Products. The Vendor guarantees that, insofar as they are able to do so, they will transfer to the customer the benefits of any transferable warranty granted by the manufacturer of the Products concerned (still subject to the terms, conditions and limits of said warranties) and any other rights which the Vendor may exercise against the manufacturer. In the case of an allegation of the Products being defective or non-compliant with regard to the provisions of the contract stipulating their supply or with regard to any indication, declaration or express condition or implicit legal guarantee, or in any other case of a claim concerning the products or their defective manufacture, in all cases the customer's recourse shall be

limited to the application of the manufacturer's warranty (as indicated above). The Vendor will, under no circumstances, be liable for any damages or interest, compensation, costs, fees or loss of any kind, whether direct or indirect, and any other recourse provided for by law is expressly excluded (except to the extent where this exclusion is prohibited by French law). The customer is obliged to request copies of all the manufacturer's applicable warranties and will be deemed to have accepted these warranties from the moment they accept the delivery of the corresponding products.

(b) In the case of a Product or Service being non-compliant or in the case of a breach of the warranty or the conditions relating to the quality, the ability to function or the suitability of the Products or Services, the obligations exclusive to the Vendor will consist of, on the Vendor's decision, repairing or replacing the Product, if it is determined that the latter is indeed defective, or providing the Service again, or reimbursing or crediting the customer for the price that the latter will have paid for the corresponding Products or Services.

(c) The aforementioned guarantees constitute the only guarantees provided by the vendor for the products and services, and the vendor rejects and excludes (to the full extent as authorised by the law) any other guarantees (either express or implicit), including, specifically, guarantees regarding quality, aptitude for a given function, non-compliance by third parties and hidden defects, subject to the clauses 12(d) to (k).

(d) If the Products and/or Services are sold to consumers as part of a transaction carried out with the consumers, within the meaning under French law, the consumers' rights will not be affected by the conditions herein.

(e) The replacement Products are under warranty as indicated above.

(f) This warranty does not apply to Products which have been badly used, tested, installed or handled by the Customer or which the Customer has not operated in accordance with the instructions in force concerning installation, maintenance or use, or which the Customer has operated in a manner which is contrary to industry standards concerning the acceptable power level.

(g) The Vendor cannot be held liable for any breach of copyright, nor model or patent infringement, which may result from the sale of the Products to the customer. The customer's sole avenue of recourse or redress in the case of a breach of copyright, or model or patent infringement, is to pursue remedies against the Manufacturer of the Products. The Vendor and the manufacturer cannot be the subject of any recourse if the breach or infringement is due to the fact that (i) the manufacturer or the Vendor have complied with the customer's specific requirements, which are different to the manufacturer's standard specifications applicable to the Products; (ii) modifications or changes have been made to the Product by a party other than the manufacturer; or (iii) the Product has been connected to other items which were not supplied or produced by the manufacturer or the Vendor.

(h) Subject to clause 12(j) below, the vendor cannot incur any liability with regard to the customer due to a declaration (unless fraudulent) or a guarantee or implicit condition, or any other condition or any obligation provided for herein, in the case of loss or specific damage, incidental or indirect, loss of benefits, turnover, business, clients, or other in the case of costs, fees or other demands for compensation (attributable to negligence by the vendor or their employees or agents or other) which could result from the provision of products and/or services or their use or re-sale by the customer and,

(i) The vendor's liability, under the contract herein, cannot exceed the price of the products and/or services which are the subject of the customer's claim,

(j) It being understood, always, that no element in these general conditions herein can have the effect, even by interpretation, of excluding or restricting the vendor's liability in the case of fraud, death or physical injury following negligence by the vendor, their employees or agents.

(k) If the customer wishes to make a claim under the preceding guarantees, the customer must inform the Vendor thereof within seven days following the discovery of the corresponding default and, in all cases, at the latest after the delivery of the corresponding products. Failure to do so will result in the customer no longer benefiting from their rights and the Vendor will no longer have any liability concerning the alleged failing. The above guarantees are non-transferable, and the Vendor cannot accept the return of products under warranty, neither directly or indirectly, which originate from the customer's own client or the Product user. No element of the conditions herein shall create a contractual link between the Vendor and the customer's own clients. Any extension of the warranty (duration, intervention procedures, etc.) will be subject to a fee.

#### **Article XIII. MAINTENANCE**

It is reiterated that maintenance operations, as well as managing the variable settings of the installation, are not covered by the Vendor's warranty obligations and will give rise to the drawing up of special contracts.

#### **Article XIV. RETENTION OF TITLE - RISKS**

The ownership of the sold equipment will only be transferred to the Customer once full payment of the price has been made.

However, the responsibility for the risks, of any kind, which the equipment may be subject to will be transferred to the Customer upon provision of said equipment at the Vendor.

In the case of the Customer going into receivership or compulsory liquidation, the Vendor shall have the right to claim the property of the goods sold, in accordance with legal provisions.

#### **Article XV. TERMINATION CLAUSE**

Any sale may be terminated automatically in the case of non-payment by the agreed due date, 48 hours after notice has been given by registered letter with acknowledgement or receipt, which remains unactioned.

#### **Article XVI. EXPORT/IMPORT**

The Buyer certifies that they will be the recipient of the Products to be delivered by the Vendor. The Buyer acknowledges, furthermore, that the Products are subject to the legislation and regulations on import and/or export controls in the different countries (and that they may, in particular, be subject to the regulations on export in force in France, in the EU and/or in the USA, as well as the amendments thereto), and acknowledges that the Products/Services cannot be used for any purpose connected with chemical, biological or nuclear weapons or missiles capable of launching said weapons, nor for supporting any terrorist activity whatsoever, nor for any other use of a military nature, and that they must not be re-sold if it is known or suspected that said resale is intended for one or other of the aforementioned uses. The Buyer must comply with all the legislation and all the regulations governing the import of the Products and/or Services in the recipient country and must pay all corresponding duties. The Buyer undertakes, furthermore, to strictly comply with all French, European or American laws on export controls, and is solely responsible for obtaining the export or re-exportation permits which may be required. As part of their normal business, the Vendor distributes the Products which it buys from their manufacturer and makes absolutely no alteration before selling them to the Buyer. As far as is possible, the Vendor preserves the integrity of the Products and sells them in the manufacturer's packaging.

The Buyer acknowledges that, in all cases, the Buyer is aware of the origin of the Products and that all of the Buyer's orders are issued with this knowledge in mind and at the Buyer's specific request. By choosing and ordering the Products, the Buyer acknowledges that they are using their own skills and own judgement. The Buyer also acknowledges that the Products sold by the Vendor are not designed by the manufacturer to be used in life support or artificial life support applications, nor in nuclear applications, nor in surgical devices or implants, nor in any other applications or products, within which a product failure could lead to physical injury, death or catastrophic material damage. If the Buyer sells or uses the Products for these applications or fails to meet the obligations incumbent upon them in terms of export restrictions or restrictions on using the product, or does not use the Products in the manner planned, the Buyer acknowledges that they do so at their own risk and undertakes irrevocably to indemnify the Vendor and its suppliers/manufacturers against any damages which may result from such a sale or use or poor use, and furthermore undertakes, specifically, to be held liable for the legal costs which may be incurred, to this effect, by the Vendor.

**Article XVII. APPLICABLE LAW - CONTRACT LANGUAGE**

By express agreement between the parties, the General Sales Conditions herein, and the purchasing and sales operations resulting therefrom, are governed by French law. The parties agree to be subject to the jurisdiction of the French courts.

In the event of disputes relating to the interpretation or execution of the order, jurisdiction is attributed to the competent court of the defendant's domicile.

**Article XVIII. ENTIRETY OF THE AGREEMENT - ACCEPTANCE BY THE CUSTOMER**

The general sales conditions herein, as well as the prices, quantity and details of the products listed on the invoice produced by the vendor for the products/services concerned, shall constitute the entirety of the agreement concluded between the parties concerning the supply of said Products or Services, and cannot be either cancelled or terminated by the customer, unless stated otherwise in a provision in this document herein. The provisions of the agreement herein cancel and replace all previous quotes, whether spoken or in writing, all agreements and any other commitments made by the parties regarding the subject hereof. The Vendor may change the Conditions herein upon written notice addressed to the customer. In the event that any one of the provisions of the Conditions herein is deemed to be invalid or inapplicable, by any court with jurisdiction, said provision will be considered to be separable and will not affect the validity nor the applicability of the remaining Conditions, which shall remain in full effect. The customer cannot assign or transfer any right or obligation whatsoever which is conferred upon them by the contract concluded between them and the Vendor, unless agreed otherwise in writing by the Vendor.