

1 – SCOPE OF WORK

1.1. The general Terms and Conditions of Sale outlined herein shall govern and control commercial relations between Xenocs SAS (hereinafter referred to as “Seller”) and all its clients (hereinafter referred to as “Buyer”).

1.2. Unless special conditions are agreed between Seller and Buyer, these general Terms and Conditions of Sale shall apply to services, materials and equipment to be performed or supplied by the Seller (hereinafter referred to as “Equipment”).

2 – GENERAL PRINCIPLES

2.1. These general Terms and Conditions of Sale shall cancel and replace the Seller’s previous general terms and conditions of sale as of the date they become effective.

2.2. These general Terms and Conditions of Sale shall be sent to every client before any order is placed. All orders imply that the Buyer has unreservedly accepted these general Terms and Conditions of Sale, which apply to Equipment delivered in France, as of April 2013.

2.3. These Terms and Conditions of Sale shall prevail over clauses providing otherwise appearing in documents or Buyer’s correspondences, including in its general terms and conditions of purchase.

2.4. Subject to compliance with current regulations, the Seller reserves the right to change its prices and its general Terms and Conditions of Sale at any time subject to one (1) month prior notice sent recorded delivery mail. It is expressly agreed that if the Buyer does not contest all or part of the clauses of the new terms and conditions within fifteen (15) days of their notification or first attempted delivery, the new clauses shall be fully binding upon the Buyer.

2.5. If the Seller does not invoke any stipulation whatsoever of these general Terms and Conditions of Sale, this may not be interpreted as a waiver on its part to subsequently do so.

2.6. These general Terms and Conditions of Sale are nominative and non-transferable. The Buyer shall not be entitled to fully or partly, directly or indirectly transfer to a third party the advantages of these general Terms and Conditions of Sale or the rights they confer.

3 – COMPLIANCE WITH REGULATIONS

3.1. The Seller will comply with applicable laws, regulations, codes and standards in force on the date of the Seller’s quotation, as they may apply to the performance of the contract.

3.2. Compliance with any local governmental laws or regulations relating to the location, use or operation of the Equipment, or its use in conjunction with other equipment, shall be the sole responsibility of the Buyer.

4 – QUOTATION, PRICES AND TAXES

4.1. All prices are in Euros. When a different currency is used, the offer is valid for a fluctuation of the currency rate lower than or equal to $\pm 0.5\%$. The reference currency rate is the one in force on the date of the offer.

4.2. Quotations are valid for three (3) months after the date shown on the quotation and are subject to change at any time prior to acceptance by Buyer.

The price shall be the price set out in the Seller’s quotation and is exclusive of any VAT or any applicable tax which the Buyer shall pay in addition.

4.3. The price is given on a FCA Xenocs SAS, Grenoble, France (Incoterm ICC 2020) basis and where the Delivery Point is other than at the Seller’s premises, the Buyer shall pay the Seller’s charges for transport, unloading, and insurance and refund to the Seller any foreign excise or other taxes in addition.

The price is based on current costs, including materials, equipment and wages. The Seller reserves the right to amend the price to take into account any variation of these costs to the Seller.

4.4. The Seller shall pay all taxes, duties, tariffs, fees, imposts, excises, or other taxes imposed by any taxing authority in France provided they are due for the performance of the Seller’s obligations.

4.5. Buyer shall pay any non-French federal, state or local income, property, license, sales, use, excise, value-added, gross receipts, or other like taxes, including import duties which may now or hereafter be applicable to, withheld, measured by, or imposed upon or with respect to the transaction, the property, its sale, its value or its use, or any services performed in connection therewith.

5 – PAYMENTS

5.1. All payments shall be made within thirty (30) days from the date of invoice within the following payment schedule: payment of 30% on the order, 60% upon delivery and 10% after full reception.

5.2. Payment shall be made by transfer of funds in a way agreed by the Parties to the Seller’s bank account number, which is mentioned in the appendix hereto. Buyer shall make all payments required hereunder net and free of any deduction, withholding, or other charges.

5.3. Failing full payment on the due date, the Buyer will be charged interest on the amount invoiced at the legal rate

+3%. The Seller may also suspend delivery or cancel existing orders without prejudice to any other actions.

6 – ACCEPTANCE

6.1. Acceptance of the Buyer’s purchase order is conditional to the Terms and Conditions of Sale set forth in the Seller’s offer. Sales are definitively concluded, insofar valid and irrevocable only when accepted in writing by the Seller.

6.2. No waiver or amendment of any of the provisions of the offer shall be binding on the Seller unless made in writing and expressly stating that it is such a waiver or amendment and signed by an authorized representative of Buyer.

7 – DELIVERIES

7.1. The terms of delivery mentioned in the acknowledgment of receipt of order are the sole contractually binding terms for the Seller except if an unforeseeable or force majeure event occurs preventing such delivery.

7.2. Equipment deliveries shall be made FCA Xenocs SAS, Grenoble, France (Incoterm ICC 2020) within the delivery date mentioned on the acknowledgment of receipt of order.

8 – ACCEPTANCE TESTS

Preliminary and final acceptance tests may be carried out by the Seller at the premises of the Buyer.

9 – RETENTION OF TITLE

9.1. Even once it has been delivered, Equipment remains the property of Seller until full payment of the price has been made by the Buyer. Payment is deemed fully made upon effective and full collection by Buyer, payment consisting of settlement of principal, interest and potential costs due.

9.2. However, risks related to Equipment shall be actually transferred upon the removal of Equipment from the Seller’s premises, all risks being borne by Buyer as of such date.

The Buyer shall bear all the risks that the Equipment may undergo or cause after their delivery and shall take all necessary steps to preserve the Seller’s ownership right.

9.3. Any claim by the Seller for unpaid Equipment shall lead to the complete cancellation of the sale; all costs incurred such as, in particular, returning costs, return to original state, shall be borne by the Buyer, without prejudice to the claims which could be made by the Seller.

10 – WARRANTY

10.1. The Seller warrants that its Equipment shall conform to the description provided to the Buyer through the Seller’s commercial and technical brochures and other documents. This warranty is exclusive and the Seller makes no other warranty, expressed, implied or statutory, including any implied warranty of merchantability or fitness for any particular purpose. In no event shall the Seller be liable for incidental, special, collateral or consequential damages.

10.2. The Equipment is guaranteed against any material or manufacturing defect during a period of one year from the date shown on the invoice relating to the Equipment, according to the guarantee certificate attached to the Equipment. Any intervention made under the terms of the guarantee will not have the effect of extending the duration of the period of one year. When the guarantee is invoked, the presentation of the certificate of guarantee is required.

10.3. According to the guarantee, the Buyer shall return the defective parts of the Equipment at his expense to the Seller. Within a reasonable period of time, the Seller will repair or replace at its option all parts of the Equipment which failures are proved to have arisen within twelve (12) months from date of delivery. The Seller bears the costs for repairs or delivery of replacements, on a CIP closest airport customs facilities equipped (Incoterms ICC 2020 basis).

10.4. Are excluded from warranty defects or damage caused by natural usage, by wrongful use, by an external accident or modification of the Equipment not provided or specified by the Seller.

11 – LIMITATION OF LIABILITY

11.1. Except as otherwise stated hereunder, the Seller shall in no event be liable for any indirect, special, incidental or consequential damages resulting from the Seller’s performance or failure to perform under this contract, or the furnishing, performance, or use of any products, furnished pursuant hereto, whether due to breach of contract, breach of warranty or otherwise.

11.2. In no event would the Seller be responsible for any patent infringement which may affect the Buyer.

12 – PROPERTY RIGHTS

12.1. In any case and under any and all circumstances, intellectual and industrial rights of any kind shall remain the full and entire property of the Seller.

12.2. The Terms and Conditions of Sale do not transfer or license any intellectual or industrial property rights on the Equipment involved, or on patent rights, trademarks, commercial names or other property rights belonging to the Seller.

12.3. The Seller warrants that the Equipment does not infringe any patent rights, trademarks, commercial names or other property rights belonging to any third party.

13 – FORCE MAJEURE

13.1. Any event of force majeure shall suspend performance of the Seller’s obligations until such event has ceased.

13.2. For the purpose of the Terms and Conditions of Sale, force majeure is defined as any event, foreseeable or not, the effects of which could not be reasonably prevented by the Seller and which are of such nature as to prevent the performance of its obligations.

The following events, among others, are constituent of force majeure: fire, flood, stoppage or delay of transportation, failure of supplier or subcontractor, strikes of any nature, machine breaking, administrative interdiction, embargo, etc.

14 – CONFIDENTIALITY

14.1. Are considered confidential information any and all information concerning the business, activities, products, know-how, economic, technical, financial, commercial or strategic data of the Seller.

14.2. The Buyer will respect the confidentiality of information exchanged and will not reveal or let them to third parties, without the prior written consent of the Seller.

14.3. Upon request from the Seller, the Buyer shall immediately return to the Seller any and all confidential information provided to him, or certify to the Seller in writing that he has destroyed any and all confidential information. The Buyer shall not keep any copy of same.

15 – SURVIVAL

15.1. If any provision of the Terms and Conditions of Sale shall be held to be invalid, illegal or unenforceable by any applicable law or regulation, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

15.2. Unless expressly waived in writing, the fact that any party does not exercise all or part of the rights conferred under the Terms and Conditions of Sale shall not in any way be construed as a waiver of any other right it did not exercise.

16 – NOTICES

All notices to be given by one party to another will be effectively and validly given by means of a letter sent recorded delivery (a further copy to be sent by fax in cases of emergency) or, in case of interruption in the postal service, by any effective means. All time periods will run either from the day of delivery or (where delivery does not take place) first presentation of that letter, as to which the records of the French postal service will be conclusive, or from the day of delivery of any notice delivered by any other means. Deadlines are counted in accordance with Articles 640 *et seq.* of the French Code of Civil Procedure.

17 – SETTLEMENT OF DISPUTES

All disputes arising in connection with the present Terms and Conditions, which are not resolved through friendly consultations, shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The arbitration shall take place in Paris in English or in French.

18 – APPLICABLE LAW

The Terms and Conditions and any Contract issued hereunder are governed by and shall be construed in accordance with the laws of France.

APPENDIX: Seller’s general information

Name of company: Xenocs
Legal status: SAS (Société par Actions Simplifiée)
Capital: EUR 402,736.00
Head Office: 1-3 allée du Nanomètre, 38000 Grenoble, France
Registration N°: 432 403 566 RCS Grenoble
VAT N°: FR 28 432 403 566
SIRET N°: 432 403 566 000 32

Represented by: Peter HOGHOJ and Frederic BOSSAN
Phone: +33 (0)4 76 26 95 40

Banking references:
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60 rue Lavoisier
Zirst de Montbonnot
38830 Montbonnot Saint Martin
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SWIFT: BNPAFRPPAAE
3004/00617/0001016557/80