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1. General, Scope

All current and future quotations, deliveries and other services provided by MegiQ BV are subject exclusively to these “Sales and Delivery Conditions”. These Terms form part of the contract which is brought about through MegiQ order confirmation respectively pro forma invoice following the Purchaser’s order. In case of any conflicts between the provisions of the order confirmation and these Terms, the provisions of the order confirmation shall take precedence. General terms and conditions or any deviating or supplementing contractual terms of the Purchaser which are inconsistent therewith shall be without effect in respect to us and shall not apply even if MegiQ does not explicitly object to them.

2. Offer and Order

(1) Our offers are subject to change if there is no other statement written in the order confirmation. Our offers and order confirmations are always conditionally of a positive credit check of the customer.

(2) Prices are in Euro (€), plus VAT, if any, at the statutory rate applicable from time to time.

(3) Documents, e.g. illustrations, drawings, weights, performance specifications in brochures, cost estimates and data sheets, etc., do not constitute any, but performance descriptions. MegiQ reserves the right to make any alterations due to and justified by technical advancements, even after confirmation of the order.

(4) Purchases may be refused or cancelled by MegiQ if, at closer inspection, the delivery is against (international) laws or export restrictions. In such case the full payment (if any) shall be reimbursed to the Purchaser.

3. Patents, Intellectual Property and Copyright

(1) Except with the express prior written consent of MegiQ, the Purchaser shall not be entitled to reproduce, copy, make available to third parties or otherwise disclose the documents (e.g. schemata, drawings, drafts, description of the software) or to use them in any manner conflicting with MegiQ’s interests. The documents shall be returned to MegiQ immediately upon request.

(2) MegiQ shall be obliged to perform the Deliveries free from defects of title, e.g. industrial property rights and copyrights of third parties (“Intellectual Property Rights”), only in the country of the place of delivery. If a third party asserts justified claims against the Purchaser due to the infringement of

General Sales and Delivery Conditions

Intellectual Property Rights resulting from the contractual use of MegiQ deliveries, MegiQ shall be liable to the Purchaser as follows:

- a) MegiQ shall, at its option and cost, either obtain a right to use the concerned deliveries, or modify them to prevent an infringement of the Intellectual Property Right, or replace them.
- b) If this is not possible for MegiQ under reasonable conditions, the Purchaser shall have the statutory rights to withdraw from the contract or to reduce the contract price as well as the right to claim damages according to Section 10.
- c) The above obligations of MegiQ shall apply only on the condition that the Purchaser immediately informs MegiQ in writing about any claims asserted by third parties, that the Purchaser does not acknowledge any infringements, and that the right of MegiQ to conduct any defence measures or settlement negotiations shall be unaffected. If the Purchaser ceases to use the deliveries on the ground of claims by third parties, the Purchaser shall make sure, such as by express notice to the third party, that the cessation of use does not constitute an acknowledgement of an infringement of Intellectual Property Rights.
- d) Claims of the Purchaser based on defects of title shall be excluded insofar as the Purchaser is responsible for the infringement of the Intellectual Property Rights.
- e) Claims of the Purchaser shall also be excluded insofar as the infringement of the Intellectual Property Rights is caused by specific Purchaser requirements, through any use which was not foreseeable for MegiQ or because of the Purchaser modifying the deliveries or using them together with products not delivered by MegiQ.
- f) Any further claims based on defects of title shall be excluded.

4. Software

- (1) MegiQ grants the Purchaser the non-exclusive right to use the contractual computer programmes and the related documentation (computer programmes and related documentation are collectively referred to as the “Software”) exclusively for the operation of the hardware intended or supplied therefore. The right of use is limited to the agreed period of time; in the absence of such an agreement, the right of use shall be unlimited in time. In particular, the right to use the Software shall not include the right to translate, lease, lend, sublicense or the right to distribute, publicly reproduce or make the Software available online to third parties outside the Purchaser’s company. Furthermore, the right to use the Software shall not include the right to reproduce the Software unless such reproduction is necessary for the operation of the hardware intended or supplied therefore or to produce a backup copy. Save as provided otherwise by mandatory law or written contractual regulations, the Purchaser shall not be authorised to modify, decompile, disassemble or otherwise reverse engineer the Software, whether in whole or in part, in order to acquire the source code.
- (2) MegiQ grants the Purchaser the right, which may be revoked in case of good cause, to transfer to third parties the right to use the Software granted to the Purchaser. The Purchaser may transfer the right to use the Software to third parties only together with the hardware which the Purchaser acquired together with the Software from MegiQ or for which the software of MegiQ is intended. In that case, the Purchaser will impose the above obligations and restrictions on the third party.
- (3) The Software will be provided solely in machine-readable form (object code) and without source code or source code documentation.
- (4) All other rights to the Software shall remain with MegiQ.

(5) Insofar as Software is provided to the Purchaser for which MegiQ owns only a derived utilisation right and which is not open source software (third-party software), the terms of use agreed between MegiQ and its licensor shall – also with regard to the relationship between MegiQ and the Purchaser – apply additionally and prior-ranking to the provisions of this Section 4. If and to the extent that open source software is provided to the Purchaser, the terms of use governing such open source software shall apply prior-ranking to the provisions of this Section 4. MegiQ will provide the source code to the Purchaser at least upon request if such terms of use for the open source software require disclosure of the source code. MegiQ will make reference at a suitable place to the existence and the terms of use of third-party software so provided, including open source software, and will make the terms of use available.

5. Delivery Period

(1) Compliance by MegiQ with the periods for Deliveries requires that all obligations of the Customer are fulfilled properly and in due time, in particular, that all documents, approvals and releases to be furnished by the Purchaser are received by MegiQ in time, and that such other obligations are satisfied which are required for the Deliveries by MegiQ to be carried out properly and in due time. If such requirements are not satisfied in time, the periods shall be extended accordingly, plus a reasonable restart period. If an advance-payment, down-payment or a corresponding agreement between the contracting parties has to be made, the preceding sentence shall apply correspondingly.

(2) The delivery date specified has been met if prior to its expiry the conditions for the transfer of risk in accordance with Section 6 (2) have been fulfilled.

(3) If non-compliance with the periods for Deliveries is due to force majeure, e.g. mobilisation, war, riot or similar events such as, but not limited to, strike, lockout or the occurrence of other unforeseen events, the periods will be extended accordingly, plus a reasonable restart period. The events of force majeure shall include any sovereign acts, such as, but not limited to, the refusal of a required governmental approval in spite of an application having been properly filed, transport restrictions and restrictions of energy consumption, but also general shortage of raw materials and common supplies as well as other reasons, such as non-delivery or late delivery by suppliers, beyond the control of MegiQ. The start and the end of the obstacle will be communicated as soon as possible to the Purchaser. If the delay is in excess of three months or if it appears likely that it will be more than three months, then the Purchaser or we can declare the contract as avoided.

6. Dispatch

(1) The place of delivery is determined in accordance with the delivery clauses, drawn up under the Incoterms 2010 and agreed between us and the purchaser. Unless another special delivery clause has been agreed, delivery shall be made ex-works (EXW) at our place of business in Eindhoven, The Netherlands.

(2) Unless otherwise agreed, risk shall pass to the purchaser at the time that the goods are made available to him. If the goods are transported to the purchaser the risk shall pass to the purchaser at the latest at the time when the goods are handed over to the first carrier for transmission to the purchaser. If the carriage of the goods should be delayed as a result of circumstances beyond our control, then risk shall pass to the purchaser at the time when our readiness for dispatch is communicated to him.

7. Packaging

The goods will be packed by MegiQ. Customary packaging is included in the price, special packaging requested by the Purchaser will be charged separately.

8. Prices and Terms of Payment

- (1) Except if otherwise agreed, prices shall be understood ex-works (EXW) plus costs of packaging, transport and insurance costs, and plus taxes and other charges related to the delivery. All prices are in Euro (€), plus VAT, if any, at the statutory rate applicable from time to time.
- (2) Prices reflect the cost situation for MegiQ at the time of conclusion of the contract. If any costs change before the day of delivery or performance of service, MegiQ reserves the right to adjust the prices provided that the Deliveries and/or Services are to be carried out as agreed more than three (3) months after conclusion of contract.
- (3) Unless agreed otherwise, payments must be after receiving the preliminary invoice and before delivery (advance payment) without any discount. For this purpose we accept bank transfer to the account stated in our invoice, payment via PayPal or credit card (Plus 3,5% service charge). For public authorities, schools or universities and renowned companies we accept payments without any deductions within 8 days after receiving the order. Independently of the means of payment, the payment shall only then be accepted as having been made when the full amount on the invoice has been credited irrevocably to our account so that we have access to it (receipt of payment). The Purchaser shall bear all additional costs that arise from his choice of means of payment.
- (4) If the Purchaser is in delay of payment, MegiQ reserves the right, without waiving any other rights, to charge annual interest of eight (8) percentage points above the official basic rate of interest of the Nederlandse Bank. We are also at liberty to prove actual greater damages.
- (5) The Purchaser may set off payments only against such claims or assert a right of retention only with respect to such claims which are uncontested or established with non-appealable effect. A right of retention of the Purchaser on the ground of contested counterclaims or counterclaims not established with non-appealable effect under any other contractual relations shall be excluded. The Customer shall be entitled to assert a right of retention only on the ground of such claims which derive from the same contract as the corresponding counterclaim of MegiQ.

9. Reservation of Title

- (1) Title to delivered items (“Retained Goods”) is retained by MegiQ until all claims and receivables of MegiQ BV against the Purchaser under the business relation (including any current account receivables) are satisfied, insofar as this is permissible under the law of the country in whose territory the Retained Goods are located as agreed upon. If such law does not permit reservation of title to the Retained Goods, but permits reservation of similar rights, MegiQ shall be entitled to assert such rights. The Purchaser commits to support all measures taken in order to protect the title to or security interests in the Retained Goods.
- (2) Insofar as the title of MegiQ to the Retained Goods expires through combination with another item, MegiQ acquires co-ownership to the new item on proportional basis, i.e. at the ratio the value of the combined Retained Goods (final invoice amount including VAT) bears to the other combined items at the time of combination. If the Retained Goods are combined in such a manner that the items of the Purchaser are to be regarded as the main item, MegiQ and the Purchaser hereby agree that the Purchaser assigns to MegiQ proportionate co-ownership to such item. MegiQ hereby accepts such assignment. Any costs incurred by MegiQ in connection with the enforcement of its claims as co-owner will be borne by the Purchaser.
- (3) Insofar as the value of all security interests to which MegiQ is entitled under this Section 9 exceeds the amount of all secured claims and receivables by more than ten percent (10%), MegiQ will release a corresponding portion of the security interests in the Retained Goods at the Purchaser’s request; however, MegiQ may select the Retained Goods to be released.

(4) The Purchaser may resell the Retained Goods within the ordinary course of business. The Purchaser hereby assigns to MegiQ its claims under the resale of the Retained Goods. The assignment includes all ancillary rights and those claims of the Purchaser regarding the Retained Goods which arise on a different legal ground against its buyers or third parties (in particular, claims based on tort and claims to insurance benefits) as well as all current account receivables in the amount of the claims and receivables owing to MegiQ. MegiQ hereby accepts the assignment.

(5) The Purchaser shall be entitled to collect the assigned claim as long as it satisfies its payment obligations vis-à-vis MegiQ. In case of the Purchaser's payment default, MegiQ will be entitled to revoke this power of collection. The Purchaser may not assign such claims, however, in order to have them collected by way of factoring, unless the Purchaser obligates the factor irrevocably to effect the counter-performance directly to MegiQ for as long as MegiQ still has receivables against the purchaser.

(6) The Purchaser shall immediately inform MegiQ of any seizures, attachments or other dispositions or interventions by third parties. If the third party is unable to reimburse MegiQ for the court or out-of-court costs incurred by MegiQ in this connection, the Purchaser shall be liable therefore.

(7) MegiQ shall have the right to withdraw from the contract and take back the delivery items if the Purchaser violates any obligations, especially in case of payment delay; the Purchaser shall be obliged to return the delivery items.

(8) If the Deliveries consist of software, the Purchaser shall not acquire title, but solely the rights specified in Section 4.

10. Warranty and Liability

(1) Software is considered to have a material defect only if the Purchaser can prove that there are reproducible deviations from the specifications. A material defect shall not be deemed to exist, however, if it does not manifest itself in the latest version of the Software supplied to the Purchaser and the use thereof by the Purchaser can reasonably be required. Furthermore, the Purchaser will not have any claims based on material defects if the material defect is based on any of the following circumstances: (a) incompatibility of the Software with the data processing environment used by the Purchaser (b) use of the Software together with software supplied by third parties unless this is expressly provided for in the documentation of MegiQ or is otherwise permitted by MegiQ in writing (c) improper maintenance of the Software by the Purchaser or third parties.

(2) Software, manuals or other documents do not constitute any, but performance descriptions.

(3) On receiving the consignment, the Purchaser shall examine the goods in order to ensure that they are complete and that there are no defects. This examination shall be effected as soon as possible, however no later than within two weeks of receipt. Should a loss or defect be ascertained, the customer shall immediately serve a notice of defect. In the case of hidden defects, the notice shall be served immediately after the hidden defect has been ascertained, however before the date on which the warranty expires. If the defect notification was unjustified, MegiQ shall be entitled to demand reimbursement from the Purchaser for any expenses incurred by MegiQ.

(4) In the case of defective goods, the Purchaser is entitled to claim at his discretion either the removal of the defective part or delivery of a product which is free of defects. MegiQ is entitled to refuse the kind of replacement chosen by the Purchaser according, if the kind of replacement requires unreasonable expense. If a defect can not be repaired after two attempts, the Purchaser shall be entitled to claim the delivery of a product which is free of defects or a price reduction or to rescind the contract. The Purchaser shall not be entitled to rescind the contract, if the defect is minor and immaterial.

(5) Warranty claims presuppose that the defect has not been caused by misuse or overstraining. If a defect appears only later than 6 months after delivery, the Purchaser must furnish proof that the product was defective upon passage of risk. Otherwise, MegiQ is entitled to furnish proof that the product was free of defects at the time of delivery.

(6) Unless expressly stated otherwise in a product's description, the warranty period shall be the following period after the goods are delivered to the Purchaser:

- 2 years for all equipment. This warranty excludes any damage to the connectors on the equipment.
- No warranty for 'consumables' (cables, connectors, adapters, bare PCBs etc) .
- No warranty for batteries.

(7) MegiQ shall be liable without limitation for damage caused with intent and in case of culpable damage to life, body or health. The liability under the mandatory provisions of product liability law applicable from time to time shall remain unaffected.

(8) Otherwise, the liability of MegiQ towards the Purchaser, no matter on what legal ground, including delay, shall be limited in aggregate to an amount equal to fifteen percent (15%) of the agreed remuneration.

(9) Notwithstanding the liability according to Section 10.7, MegiQ shall not be liable for financial loss or consequential damages, for loss of profit, loss of production, interruption of business, contractual claims of third parties, lost usage, financing expenditure, interest loss and claims under a covering purchase as well as for loss of data, information and programmes as a result of a software error.

(10) Any further liability of MegiQ shall be excluded.

11. Return policy

(1) MegiQ offers a 30 day money back guarantee on all equipment under the following conditions:

- An RMA voucher for the equipment has been awarded by MegiQ to the purchaser.
- The equipment is undamaged and intact and in its original packaging.
- The equipment has been received back by MegiQ.

(2) Returns of the following items is not possible:

- Equipment with custom modifications, specifications, calibrations or certifications.
- 'consumables' (cables, connectors, adapters, bare PCBs etc).
- Batteries.

(3) Returns have to be shipped to:

MegiQ BV
Esp 242
5633AC Eindhoven
The Netherlands

(4) The Purchaser has to bear all expenses for the reshipment. MegiQ only deals with the reshipment if the Purchaser has attached the completed RMA-voucher and a copy of the invoice to the reshipment.

The required RMA-voucher is provided by MegiQ free of charge (after request). Reshipment to MegiQ shall be at the cost and risk of the Purchaser.

(5) After receiving goods under the money back guarantee, MegiQ shall reimburse to the amount of the goods according to the invoice, excluding shipping and handling costs. Normal shipping costs shall be deducted from those goods that were initially shipped to the Purchaser without shipping charges.

13. Miscellaneous

- (1) All agreements, including covenants, must be made in written form to be valid. This form requirement can be waived only in writing.
- (2) If any provisions of the contract are invalid, the remaining provisions shall continue to be in force.

14. Place of Jurisdiction and Fulfilment

- (1) The contractual relations between MegiQ and the Purchaser shall be governed exclusively by Netherlands law, excluding the conflict-of-law rules. The application of the UN Convention on Conflicts for the International Sale of Goods (CISG) shall be excluded.
- (2) Any legal disputes arising from this contract shall be governed exclusively by the courts in our place of business in Eindhoven, The Netherlands. Notwithstanding sentence 1 we are also entitled to take the purchaser to court in his place of business (provided that the customer is a businessman, a legal entity under public law or a special fund under public law).