

# NETIS Holding General Terms and Conditions of Sale

V 2.0 - 2020-04-24

## **1. GENERALS:**

1.1 Any delivery of goods and services by NETIS Holding and all its direct and/or indirect affiliates, jointly or separately (hereinafter "SELLER") to any direct or indirect third party (hereinafter "CUSTOMER") shall be subject to the Terms and Conditions set forth herein to the extent no other agreements have been explicitly made. The "CUSTOMER" 's general terms and conditions that are inconsistent with the Terms and Conditions set forth herein shall only be applicable to the extent "SELLER" has explicit approved in writing form.

1.2 The sale, resale and the disposal of goods and services including any associated technology, information or documentation may be governed by International export control regulations as well as by the export control regulations of further countries (if applicable). Any resale of goods to embargoed countries or to denied persons or persons that use or may use the goods for military purposes, Weapons technology is subject to a prior official license and/or authorization. "CUSTOMER" declares with his order the conformity with such statutes and regulations and that the goods will not directly or indirectly delivered into countries that prohibit or restrict the import of such goods. "CUSTOMER" declares to have obtained all licenses required for export and import of such goods.

## **2. INFORMATION:**

2.1 Consultancy Information and consultancy in relation to "SELLER" s (and all his partners and providers) goods and services is provided as deemed appropriate from existing experience. Any values quoted as part thereof, especially performance data, represent average values which have been determined through experiments under standard laboratory conditions.

2.2 "SELLER" cannot assume any commitment for its products to precisely meet the quoted values and areas of application. Section 10 of these Terms and Conditions governs any issues of liability.

## **3. RIGHTS OF USE:**

3.1 The "SELLER" hereby grants the "CUSTOMER" the following non- exclusive, transferable, worldwide, perpetual and irrevocable rights:

3.2 to use the Products, to integrate them into other products and to market if applicable;

3.3 to use the Software ("Software" meaning software developed and/or acquired by "SELLER" and/or its partners, and delivered to "CUSTOMER" as part of the Products and/or as a Product as well as its related documentation) in connection with the installation, launch, testing and operation of the Software;

## **4. PRICES:**

4.1 The prices quoted in the order confirmation of the "SELLER" shall solely apply. Additional services will be invoiced separately.

4.2 Taxes: all amounts payable are gross amounts but exclusive of any value added tax, use tax, or sales tax, all kind of duties or charges what so ever. "CUSTOMER" shall be entitled to withhold any applicable withholding taxes (if any) from payments due to "SELLER". "SELLER" shall comply with all applicable tax legislations.

## **5. DELIVERY:**

5.1 Unless otherwise expressly agreed, "SELLER" shall deliver ex works (EXW INCOTERMS 2010) using these Terms and Conditions.

5.2 Delivery periods shall only be binding if expressly agreed in writing. Delivery periods shall begin on the date of the order confirmation by the "SELLER", however, in no case prior to settlement of all details relating to an order including the furnishing of any required official certificates. Delivery periods shall be deemed to be met on timely notification of readiness to ship if the goods cannot be dispatched in time through no fault of the "SELLER".

5.3 With respect to delivery periods and dates, which are not expressly defined as fixed in the order

confirmation, the “CUSTOMER” may (10 weeks after expiry of such a delivery period or date) set an adequate grace period for delivery. “SELLER” may only be deemed to be in default after expiry of such a grace period.

5.4 Without prejudicing, “SELLER” rights from “CUSTOMER” ’s default, delivery periods and dates shall be deemed to be extended by the period of time during which the “CUSTOMER” fails to comply with his obligations towards “SELLER”. In case “SELLER” does not comply with its obligations, “SELLER” shall only be liable for all types of damages in accordance with section 10 of these Terms and Conditions.

5.5 “SELLER” may perform partial deliveries and render partial services if such action would not unreasonably affect the “CUSTOMER”.

5.6 The “CUSTOMER” may rescind the contract after two unsuccessful grace periods unless the hindrance is merely temporary in nature and a delay would not unreasonably affect the “CUSTOMER”.

5.7 Any contractual or statutory right of a “CUSTOMER” to rescind the contract, which the “CUSTOMER” fails to exercise within a reasonable period of time set by “SELLER”, shall be forfeited.

#### **6. SHIPMENT, PASSING RISK:**

6.1. Unless otherwise expressly agreed, shipment shall always be carried out at the “CUSTOMER” ’s risk. The risk shall pass to the “CUSTOMER” as soon as the goods have been handed over to the person executing the shipment.

6.2 If a shipment is delayed for reasons to be attributed to the “CUSTOMER”, the risk of accidental deterioration, loss and destruction shall pass to the “CUSTOMER” on notification of “SELLER” readiness to ship. Required storage costs after passing of risk shall be borne by the “CUSTOMER”. This shall not affect any other claims.

6.3 If the “CUSTOMER” defaults in accepting, “SELLER” shall be entitled to claim refund of any expenditure associated therewith and the risk of accidental deterioration, loss and destruction shall pass to the “CUSTOMER”.

#### **7. PAYMENT:**

7.1 Unless otherwise expressly agreed, payment shall be made in full within 30 days from the date of the invoice. Payment shall be considered to have been made on the day the payable sum is received by “SELLER”. Bills of exchange and cheques shall not be deemed payment until after they have been honored and will be accepted without any obligation to make timely presentation and timely protest.

7.2 Immediately upon default of payment – or from the due date – “SELLER” shall be entitled to demand default interest of 5% percentage points above the base lending rate p.a... “SELLER” reserves the right to claim a higher actual damage.

7.3 “CUSTOMER” may only withhold or offset due payments against their own counter-claims if these are uncontested or have been found to be legally binding.

7.4 Any of “SELLER” ’s receivables shall be immediately payable in the event of a default in payment, a notice given in protest against a bill of exchange or suspension of the “CUSTOMER” ’s payments, independent of the term of the bills of exchange which may have already been accepted. In any of these aforementioned cases, “SELLER” shall also be able to perform remaining deliveries only against advance payment or provision of security, and, if no such advance payment is made or security provided within a 4 weeks’ time period, to cancel the contract without fixing another extension term. This shall not affect any further claims.

#### **8. RETENTION of OWNERSHIP:**

8.1 Delivered goods shall fully remain property of “SELLER” (goods sold subject to retention of title/ownership) until all receivables, on whatever legal grounds, have been fully paid up.

8.2 The “CUSTOMER” may resell, process, combine or mix with other goods, or otherwise integrate goods under retention of title in normal business operations, as long as the “CUSTOMER” is not defaulting.

#### **9. SOFTWARE:**

9.1 Software programs and/or applications will fully remain the property of “SELLER” and/or its partners and suppliers. No program, documentation or subsequent upgrade thereof may be disclosed to any third party, without the prior written consent by “SELLER”, nor may they be copied or otherwise duplicated, except for the “CUSTOMER” 's internal needs and back-up copy for safety purposes.

9.2 The “CUSTOMER” is granted a non-exclusive, non-assignable right to use the software, including any related documentation and updates, for no other purpose than that of operating the product, for which such software is intended. For programs and documentation created and delivered at the “CUSTOMER” 's request, “SELLER” shall grant that “CUSTOMER” single end user licenses for non-exclusive non-assignable exploitation.

#### **10. WARRANTY:**

10.1 The goods claimed to be defective shall be returned to “SELLER” for examination in their original or equivalent packaging. “SELLER” shall remedy defects if the warranty claim is valid and within the warranty period. It is at “SELLER” 's discretion whether “SELLER” remedies the defect by repair or replacement. “SELLER” shall only bear the costs necessary to remedy the defect.

10.2 “SELLER” shall be entitled to refuse to remedy defects in accordance with “SELLER” 's statutory rights. “SELLER” may refuse to remedy defects if the Customer has not complied with “SELLER” 's request to return the goods claimed to be defective.

10.3 The “CUSTOMER” shall be entitled to rescind the contract or reduce the contract price in accordance with his statutory rights, however, the Customer shall not be entitled to rescind the contract or to reduce the contract price, unless the Customer has previously given “SELLER” twice a reasonable period to remedy the defect which “SELLER” has failed to observe, unless setting of such a period to remedy defects are dispensable. In the event of rescission, “CUSTOMER” shall be liable for any intentional or negligent actions that cause destruction or loss of the goods as well as for failure to derive benefits from the goods.

10.4 Any rights of the “CUSTOMER” to receive damages or compensation shall be governed by the provisions in section 10 of these Terms and Conditions.

10.5 Specifications of “SELLER” 's goods, especially pictures, drawings, data about weight, measure and capacity contained in offers and brochures are to be considered as average data. Such specifications and data shall in no way constitute a quality warranty but merely a description or labelling of the goods.

10.6 Unless limits for variations have expressly been agreed in the order confirmation, such variations shall be admissible that are customary within the trade.

10.7 “SELLER” shall not accept any liability for defects in the goods supplied if they are caused by normal wear and tear. The Customer shall have no rights against “SELLER” in respect of defects in goods sold as lower-class or used goods.

10.8 Any warranty shall be void if operating or maintenance instructions are not observed, if changes are made to deliveries or services, if parts are replaced or materials used that are not in accordance with the original product specifications by “SELLER”, unless the “CUSTOMER” can show that the defect in question resulted from another cause.

10.9 The limitation period for claims for defects shall be no longer than 3 months.

#### **11. LIABILITY & LIMITED LIABILITY:**

11.1 Notwithstanding anything contained in this Agreement, neither Party shall under any circumstances be liable for any loss of profit, loss of opportunity, loss of revenues and/or any special, indirect, consequential or incidental damage and/or other similar damage arising under or in connection with this Agreement and/or any Product(s),

11.2 The liability of “SELLER” for losses caused by late delivery due to minor negligence shall be handled as a limited liability as far as this is not affecting seriously the “CUSTOMER” business.

11.3 The exclusions and limitations of liability in sections 11.1 – 11.2 shall not apply in cases of a quality warranty in accordance with the contractual conditions, in cases where “SELLER” has maliciously

failed to disclose a defect, in case of damages resulting from negligence, or where the laws on product liability impose overriding liabilities which cannot be excluded.

11.4 The limitation period for claims against “SELLER” – based on whatever legal ground – shall be 3 months from the date of delivery to the Customer. In case of tortious claims, 1 months from the date the “CUSTOMER” becomes aware or could have become aware of the grounds giving rise to a claim and the liable person, had the “CUSTOMER” not been grossly negligent. The provisions in this clause shall neither apply in cases of intentional or gross negligent breaches of duty nor shall they apply in cases referred to in section 11.3 of these Terms and Conditions.

#### **12. Industrial/Intellectual Property Rights:**

12.1 Industrial/Intellectual property:

Each Party retains exclusive ownership of all patents, trademarks, drawings and models, software, know-how, information and any and all other elements belonging to it, developed or acquired prior to the entry into force of the Order ("Pre-existing Intellectual Property Rights"). The “SELLER” shall assign to the “CUSTOMER”, on an exclusive and definitive basis, the full ownership of the Services carried out as part of an order as well as all related economic property rights ("Intellectual Property Rights of the CUSTOMER").

12.2 Non-infringement guarantees

The “SELLER” shall guarantee to the Buyer that he or his partners and suppliers owns all industrial/intellectual property rights, copyrights, image rights and other rights in the documents and elements, whatever their form, incorporated within the performance of the Services provided or carried out as part of an order.

#### **13. DISPOSAL:**

13.1 “CUSTOMER” is obliged to closely observe the documents accompanying the goods and to ensure the correct disposal of the goods in accordance with the applicable law.

13.2 “CUSTOMER” shall be obliged to dispose the goods at its own costs.

13.3 “CUSTOMER” shall be obliged to transfer this obligation on the purchaser of the goods or parts thereof in case of a resale of the goods.

#### **14. CONFIDENTIALITY:**

14.1 Both Parties agree to keep confidential any technical, commercial, business related, financial or company information received in whatever form from the other Party and/or the other Party’s agents, subcontractors, contract manufacturers or customers. Each Party shall protect all such information from improper, unauthorized, negligent, or other inadvertent transfer to any third party.

14.2 “SELLER” agrees that any collection, use, accessing, transferring, transmitting and/or storage (“Processing”) of personally identifiable information (“PII”) shall be in accordance with the data privacy and protection laws of the applicable country of residence of the data subject and/or owner of the PII.

14.3 Unless otherwise expressly stipulated in writing, no information provided to “SELLER” in connection with orders shall be regarded as confidential, unless their confidential nature is obvious.

14.4 “SELLER” points out that personal data in relation to the contractual relationship may be stored by “SELLER” and may be transferred to companies associated with “SELLER” and all his partners and suppliers for business purposes.

#### **15. ENVIRONMENT, COMPLIANCE AND ETHICS:**

15.1 “SELLER” and all its subcontractors, partners, suppliers... agree to comply with the principles of The Business Charter for Sustainable Development: Principles for Environmental Management (published by the International Chamber of Commerce 1991) for environmental management and all “CUSTOMER” 's official environmental policies and guidelines, “CUSTOMER” 's Environmental Requirements and other “CUSTOMER” 's reasonable instructions. “SELLER” shall inform “CUSTOMER” of all materials, substances and compounds by weight and by location in the Product in the form required by “CUSTOMER” . “CUSTOMER” shall be entitled to disclose such information to respective authorities and/or customers, when so required by the authorities and/or his own customers. “SELLER” shall further, upon request, provide “CUSTOMER” with instructions for disassembly, re-use and end-of-life treatment of the Product(s), and with any other information that “CUSTOMER” may require. “SELLER” agrees to be responsible for recycling and other

environmental aspects of the Products. "SELLER" agrees to comply with all laws, regulations, ordinances and administrative orders and rules related to any Products and/or the manufacturing process.

15.2 Each Party shall comply fully with all applicable laws, including international, national, regional and local laws, statutes, directives, decrees, orders, treaties and regulations. For the avoidance of doubt, compliance with this sub-section includes, but is not limited to, compliance with the United Nation Foreign Corrupt Practices Act and any other applicable legislation enacted to enforce or implement any international convention prohibiting bribery and corruption.

15.3 Neither Party shall offer or give to any employee or representative of the other party anything of value, including but not limited to any gift, entertainment or hospitality, which is intended or could be viewed to improperly influence the other Party's employee or representative.

15.4 Failure by "CUSTOMER" to comply with the provisions of this clause 15 shall be deemed a material breach of this Agreement by Supplier entitling "SELLER" to terminate this Agreement.

## **16. APPLICABLE LAW AND JURISDICTION:**

16.1 This Agreement shall be governed by and construed in accordance with the substantive laws of FRANCE All disputes arising out of or in connection with the present Agreement shall be finally settled by arbitration in accordance with the Rules of the Arbitration Institute of the Geneva Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The seat of the arbitration shall be PARIS. The procedural law of this place shall apply where the rules are silent. The language of the arbitration shall be English. The award shall be final and binding on the Parties and enforceable in any court of competent jurisdiction.