

## TERMS AND CONDITIONS FOR SALE OF EQUIPMENT, SOFTWARE, SPARE PARTS AND ACCESSORIES

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## 1 **SCOPE**

These are the terms and conditions for sale of equipment, software, spare parts and accessories of MicroTechniX BVBA, a company under Belgian law, with its registered office at Sparrenhofstraat 18, 9100 Sint-Niklaas, entered in the Brussels Register of Legal Persons under number BE0502 409 817 (hereafter called MTX).

If applicable, the equipment, software, spare parts and accessories to which it applies are determined in the Task Order(TO)/Statement of Work(SoW).

### Definitions

Equipment	Apparatus or instrument designed for a specific operation
Software	Icarus software and Third-Party software
Spare parts	A duplicate part to replace a lost or damaged part of a machine
Accessories	An object or device that is not essential in itself but adds to the convenience or effectiveness of something else
The Goods	Equipment, Software, Accessories and Spare Parts

These terms and conditions are also applicable to goods for which there is no TO/SoW and for spare parts that are not part of a corrective, preventive maintenance or a Service Level Agreement (SLA).

For the terms and conditions for Service and Support for these goods, we refer to the document "Terms and condition for Service and Support", which can be found on our website.

## 2 **GENERAL PROVISIONS**

These Terms and Conditions shall govern all legal relationships between MTX and the Customer.

Proposals by MTX shall not constitute a commitment. Statements made by representatives, the orders that are placed shall be valid only if accepted and confirmed by MTX in writing.

Changes and/or additions to orders or maintenance contracts shall bind MTX only after and to the extent accepted and confirmed by MTX in writing.

If these Terms and Conditions conflict with those of the Customer, the sales and maintenance conditions of MTX shall take precedence.

If any provision of these Terms and Conditions is held to be null and void either in full or in part, this shall not affect the validity of the other provisions of the Terms and Conditions. The provisions contained in the Terms and Conditions shall be interpreted in a way that makes them valid and enforceable under the applicable law.

Derogations from these Terms and Conditions by MTX in favor of the Customer shall never entitle the latter to seek subsequent recourse to such derogations or to invoke their application.

If MTX derogates from certain clauses or sub-clauses of these Terms and Conditions, the other clauses and sub-clauses shall remain fully in force. The rights of MTX shall not be impaired by any omission on its part to require strict compliance with the Terms and Conditions.

Any waiving of a right or an entitlement under these Terms and Conditions or concerning a failure by the other party may occur only by means of explicit written communication. The waiving of a right or an entitlement shall never be interpretable as the waiving of any other right, even if the two cases exhibit great similarity.

### **3 PAYMENT CONDITIONS**

MTX shall send invoices by regular mail, postage prepaid, at the address of the Customer.

Stated prices shall be net prices. All expenses, taxes and costs additional to or resulting from the sale shall be payable entirely by the Customer.

Invoices shall be payable on receipt and within NET 45 days of the invoice date by transfer to one of the bank accounts of MTX without any discount, reduction, lien or set-off. Payments shall be deemed to have been made in Belgium.

Any amounts not received by due date shall automatically incur 8% interest without prior reminder. Additionally, the amount owed shall be increased by a fixed penalty equal to 10% of the outstanding amount, subject to a minimum of EUR 40 for administrative and other costs.

Non-payment by due date shall automatically invalidate any permitted payment terms without prior reminder and shall render amounts owed to MTX immediately payable on demand. In such cases MTX may cancel all outstanding orders without prejudice to any of its rights or receivables.

Prices stated in offers and/or order confirmations shall be valid for 30 days, unless expressly otherwise stated or unless the prices of suppliers of MTX are increased.

If payment is not made in material breach with the agreed payment conditions and if the Customer is bankrupt or insolvent, MTX shall have the right - where applicable and acting fair and reasonably – to repossess the delivered goods or to retain repaired goods until the date of full payment.

### **3.1 Payment Terms**

#### Orders less than EUR 1.000,00 (exclusive VAT)

Orders for the purchase of goods totaling less than EUR 1.000 (exclusive of VAT) shall be subject to an administrative and postage charge covering the sending costs and administrative handling.

#### Orders less than EUR 30.000,00 (exclusive VAT)

Unless otherwise specified in a TO/SoW, orders for the purchase of products less than EUR 30,000 (exclusive of VAT) shall be payable on shipment or installation if applicable.

#### Orders above EUR 30.000,00 and under EUR 150.000,00 (exclusive VAT)

Unless otherwise specified in a TO/SoW, orders for the purchase of products totaling more than EUR 30,000 (exclusive of VAT) shall be subject to prepayment of half the price at the time of placing the order. The other half of the price shall be payable on delivery/installation.

#### Orders above EUR 150.000,00 (exclusive VAT)

Unless otherwise specified in a TO/SoW, orders above 150.000,00 payment terms shall be 50% upon Customer's placement of purchase order, 30% due upon shipment notice from manufacturing site and 20% due upon completion of the installation.

## **4 DELIVERY TIMES**

MTX can never be held accountable for delays caused by circumstances beyond its control, including but not confined to situations where the Customer deficiently performs its obligations under these Terms and Conditions or any other contract with MTX or where a delay is caused by a supplier of MTX.

Unless expressly otherwise agreed in writing, MTX may have any part of the agreement performed by third parties at any time, in which case these Terms and Conditions shall also operate in the favor of those third parties.

MTX reserves the right to suspend delivery in the event of the bankruptcy or insolvency of the Customer.

The Customer reserves the right to suspend the payment of any invoices issued by MTX in the event of the bankruptcy or insolvency of MTX.

Any liability of MTX for delayed delivery shall never exceed 5% of the value of the delayed goods, insofar as the Customer demonstrates that the damage totals at least that amount.

## **5 SHIPMENT AND TRANSFER OF RISK**

Unless expressly otherwise stipulated by MTX, the shipment charges for the goods shall be payable by the Customer.

Unless expressly otherwise stipulated by MTX, the goods shall be delivered directly or indirectly to the Customer.

MTX reserves the right to determine the method and route of shipment.

The risk shall transfer at the time that MTX tenders the goods to the carrier. If the carrier does not take receipt of the goods, the goods shall be stored at a place designated by MTX. The risk and liability attached to the goods shall then rest with the Customer.

If the goods exhibit visible defects due to shipment or if the delivered goods are inconsistent with the delivery note, the Customer shall not accept the delivery until after having the damage or inconsistency noted on bill of lading. The note shall be signed by the carrier. The same shall apply on reasonable suspicion of damage (e.g. if the packaging is damaged). Invisible damage caused by shipment shall be reported to the carrier in writing as soon as it is discovered. In both of the aforementioned cases the Customer shall inform MTX in writing within five calendar days.

## **6 RESERVATION OF TITLE**

The goods shall remain the property of MTX until it has received all amounts owed for them (retention of title).

A Customer who is a reseller may avail of all the goods covered by the reservation of title for the purpose of its normal conduct of business, provided always that the solvency of the Customer is not in question.

A reseller shall inform MTX of any kind of measure that impairs the rights of MTX and shall assist MTX in all steps to protect its rights.

## **7 ACCEPTANCE AND COMPLAINTS**

The Customer shall pay for all inspections performed for the purpose of accepting the goods.

The Customer shall take receipt of the goods, even if impaired by defects (within the meaning of article 'scope of warranty' hereafter) of minor significance. In return MTX shall rectify free of charge such defects that existed at the time of delivery.

All complaints concerning the goods shall be made known in writing that accurately describes the complaints and that must be sent within fifteen (15) calendar days of receipt or refusal of the goods. The date of posting (postmark) shall be the date of dispatch. After expiry of this term the goods shall irrefutably be deemed accepted.

Complaints concerning invoices shall be made known in the same way and within the same period of time as for goods, in the absence of which the invoice shall irrefutably be deemed accepted.

### **7.1 FACTORY ACCEPTANCE (FAT) & SITE ACCEPTANCE (SAT)**

Where Customer has ordered a custom Product or system and has agreed with Seller in a TO/SoW that a FAT and/or SAT will be conducted, the acceptance testing procedures and criteria will be as set forth in the TO/SoW.

Unless otherwise agreed upon in the TO/SoW,

- i. the Customer is responsible for scheduling any agreed upon FAT within 30 days of notification by Seller that FAT is ready or FAT will be assumed to be successfully completed;
- ii. the Customer must accept delivery of Product or system within 30 days of successful completion of FAT or storage and interest triggers are activated;
- iii. If the Customers site cannot accommodate the installation within 30 days of completion of FAT, the Product or system will be deemed site accepted by the Customer at the end of such 30-day period and the MTX-warranty period (see section 'Warranty') will commence as of such date; and

- iv. If the SAT is not completed within 30 days of delivery of the Product or system to Customer, or Customer has not notified Seller of rejection or acceptance within 30 days of delivery, due to any reason other than a reason attributable to Seller, the Product or system shall be deemed site accepted at the end of such period.

## **8 WARRANTY**

### **8.1 Limitations**

The warranty shall not cover Defects that result from normal wear and tear or from inappropriate use and Defects that occur after the goods have been altered or repaired by persons other than engineers and approved agents of MTX. The warranty shall cover only goods manufactured by MTX (i.e. MTX-warranty). Other goods shall be covered only by the warranties of the manufacturers concerned in accordance with their own provisions (i.e. Third Party-warranty).

### **8.2 Scope of warranty**

The goods shall be warranted against all defects in material or manufacturing ('Defects') except for consumables. All Defects reported during the warranty period shall be rectified by MTX free of charge either by repairing the goods or by replacing them by goods that are not defective. The MTX-warranty period shall be suspended for the duration of the repair or replacement and shall recommence thereafter.

### **8.3 MTX-Warranty period**

Unless otherwise specified in the TO/SoW, the MTX-warranty for new deliveries of goods shall be 12 calendar months. For spare parts that are not part of a corrective, preventive maintenance or a SLA, the MTX-warranty period is 6 calendar months. This period starts on the shipment of the goods to the Customer.

In case there is a factory acceptance test, the MTX-warranty period shall start on the 16th day following the acceptance of the results of the FAT, which shall not be unreasonably withheld by the Customer (see section 'Acceptance and Complaints/FAT & SAT').

### **8.4 Complaints**

The warranty shall be invoked by sending MTX a motivated written protest, possibly even by mail immediately after the defect occurs.

### **8.5 Computer programs**

Computer programs shall be warranted against all Defects that not significantly prevent their use. Moreover, computer programs shall be warranted for their compliance with the program descriptions made available to the Customer. However, this shall apply only insofar as they were installed in accordance with the instructions given by MTX. MTX cannot warrant that the computer programs will work in all combinations chosen by the Customer if those combinations are not included in the descriptions. If a Defect comes to light in the computer programs, MTX shall inform the Customer of ways of rectifying the problem or shall carry out a repair or install an equivalent version. MTX shall not accept any kind of liability and shall not provide any kind of warranty for programs, interfaces and similar that originate from other manufacturers. MTX cannot be held responsible for the loss of data due to a repair.

## **8.6 Refurbished, demonstration and second-hand equipment**

Unless otherwise agreed in writing, no warranty shall be given on deliveries of refurbished, demonstration or second-hand equipment.

## **9 INTELLECTUAL PROPERTY**

MTX expressly reserves intellectual property rights, such as the rights attached to industrial, literary and artistic property ('Rights'), concerning its specifications, plans and other documents. They may not be disclosed to third parties under any circumstances whatsoever without the prior written permission of MTX.

MTX shall indemnify, defend and hold harmless the Customer in any dispute the Customer for any compensation owed to third parties as a result of a dispute concerning the Rights attached to the goods, insofar as MTX was informed 10 days from taking cognizance of every form of dispute.

The liability of MTX towards the Customer shall be limited, at the reasonable election of MTX, to making the required modification to the goods, replacing them by equivalent goods or buying them back at the purchase price. The Customer shall immediately inform MTX in writing of any claim made by third parties concerning the Rights.

The Customer shall refrain from making any kind of change to the appearance of the goods that could give rise to the impression that the Customer or a third party is the manufacturer of the goods, shall refrain from removing markings affixed to the delivered goods and shall refrain from affixing to the goods any factory markings of the Customer or of a third party.

MTX shall not accept any liability for rights enforceable by third parties with regard to goods manufactured in accordance with plans, designs and descriptions provided by the Customer.

## **10 RIGHTS ATTACHED TO COMPUTER PROGRAMS**

MTX shall grant the Customer a non-exclusive right to use the programs, additions to programs and accompanying documentation.

The Customer shall use the programs only for the delivered goods.

The granted rights may not be assigned to third parties without the prior written consent of MTX. Moreover, the Customer shall refrain from copying any part of the programs, additions to programs and accompanying documentation, from making copies of copies and from reproducing them and from allowing their inspection by third parties.

## **11 THIRD PARTY LIABILITY AND COMPENSATION FOR DAMAGE**

Except for the liability provided for under these Terms and Conditions and subject to the application of mandatory or public order laws, the Customer shall not be able to claim any compensation from MTX.

Unless otherwise stipulated in these Terms and Conditions, the liability of MTX shall be limited in all instances to the invoiced amount.

MTX shall not be liable for losses of or changes to data as a result of program errors and shall not be under obligation to restore lost or changed data.

## **12 FORCE MAJEURE**

If it is unable to meet its obligations towards the other party due to force majeure lasting more than 45 calendar days, both parties shall have the right, at its election, to suspend performance of the agreement for not more than six months, or to consider the agreement fully or partly dissolved, without owing the other party any compensation for damage, even if both parties may derive any kind of benefit from the force majeure.

For the present purposes 'force majeure' shall mean any circumstance beyond the control of parties or any unforeseeable circumstance as a result of which the other party cannot reasonably be expected to fulfil the agreement.

MTX will not be liable to Customer for any failure to fulfill its obligations due to causes beyond its reasonable control and without its fault or negligence including, but not limited to, governmental laws and regulations, acts of God or the public, war or other violence, civil commotion, blockades, embargoes, calamities, floods, fires, earthquakes, explosions, accidents, storms, strikes, lockouts, work stoppages, labor disputes, or unavailability of labor, raw materials, power or supplies. In addition, in the event of any determination pursuant to the provisions of a collective bargaining agreement between the Customer and any labor union representing any employees of the Customer preventing or hindering the performance of any of the obligations of MTX, or determining that the performance of any such obligations violates provisions of that collective bargaining agreement, or in the event a trade union, or unions, representing any of the employees of the Customer otherwise prevents MTX from performing any such obligations, then MTX shall be excused from the performance of such obligations unless the Customer makes all required arrangements with the trade union, or unions, to permit MTX to perform the work. The Customer shall pay any additional costs incurred by MTX that are related to any labor dispute(s) that involve the Customer.

## **13 DEFAULT-DISSOLUTION**

Parties recognize that the agreement shall automatically be dissolved in full or in part and without prior notice of breach and/or recourse to the courts in the event of the insolvency, declaration of bankruptcy or seizure of significant proportion of the assets or liquidation of both parties. This stipulation shall also apply in the event of application of the Continuity of Enterprises Act, subject to observance of the mandatorily legal obligations.

Payment obligations that arose prior to the time of dissolution shall remain fully in force and shall be payable immediately on demand without prior notice of breach or recourse to the courts.

## **14 DISPOSAL OF PROFESSIONAL ELECTRICAL AND ELECTRONIC APPLIANCES**

For the performance of the acceptance obligation for professional electrical and electronic appliances, MTX is a member of RECUPEL and pays an administrative contribution for this.

The customer shall undertake to bear any possible costs for the collection and processing of both the professional electrical and electronic appliances that form the subject of the order when these are discarded and for the discarded electrical and electronic appliances that are thus replaced.

In order to comply with waste products legislation, the customer can call upon an operator with whom RECUPEL has concluded a Charter ([www.recupel.be](http://www.recupel.be)). If desired, MTX can put the customer in contact with an operator for a price quote.



The acceptance obligation only applies to decontaminated appliances for which the customer is solely responsible.

## **15 FORUM**

The commercial state courts of Oost-Vlaanderen (Belgium), section Dendermonde shall hold exclusive jurisdiction to hear any disputes that arise from the contractual relationship with MTX (both sales and after-sales), including disputes regarding application or interpretation of these Terms and Conditions.

Any disputes arising from the contractual relationship with MTX (both sales and after-sales), including disputes regarding application or interpretation of these Terms and Conditions, shall be governed solely by the laws of Belgium.

The language of the procedure shall be Dutch.

Personal data shall be processed in accordance with privacy regulations. The personal data that we obtain about you shall primarily be used for the purposes of the legal relationship that we maintain with you, in particular with regard to the sales or maintenance agreements that you have with MTX.

This information may also be used

- i. to fulfil any service that you require,
- ii. to market MTX products and services and associated products and services, among other things through direct marketing notably for personalized marketing purposes, and subsequently
- iii. to improve the way that we as a company serve you.

This information shall not be disclosed to third parties outside the MTX, its branches or associated companies, agents, dealers or licensees and other enterprises with each MTX has agreed service provisioning on your behalf and any acquirer, agent or substitute of the parties mentioned above. The information shall originally be processed and managed by MTX BVBA, Sparrenhofstraat 18, 9100 Sint-Niklaas, and may be forwarded to other countries, within or outside the European Union, where it may also be processed and stored. Subject to presentation of means of identification, you have the right as an individual to inquire about the information we have stored about you and to require corrections to it if necessary. To do this you must contact MTX BVBA, Sparrenhofstraat 18, 9100 Sint-Niklaas. Additionally, you may contact the Privacy Commission, Waterloolaan 115, 1000 Brussels.