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## Terms & Conditions of Sale

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The following Terms and Conditions of Sale govern the sale and/or license of TBS Products ("Products") or services by TBS Holding AG ("TBS") to resellers ("Reseller") to the exclusion of end customers.

### 1. DEFINITIONS

- a. "Products" are goods sold or licensed by or through TBS.
- b. "Services" comprise any service provided by TBS to Reseller or to any third party on behalf of the Reseller under any agreement concluded between TBS and Reseller, such as but not limited to upgrade-protection, biometrical second level support, training, support and counseling services.
- c. "Delivery" occurs once the Products are made available to Reseller at TBS' contract manufacturer premises in Switzerland (standard TBS shipping is ex works according to Incoterms 2010), save as otherwise agreed to by and between TBS and Reseller in writing.

### 2. PRICES

- a. Products and Services shall be charged with the prices laid down in the then current TBS Price List in force at the date Resellers' Order is received and accepted by TBS ("Price List"). TBS reserves the right to adapt the Price List from time to time.
- b. Spare parts shall be charged with TBS unit prices at the time of Delivery.
- c. Storage fees in the amount of 0.5% plus interest of 0.4% per month, both percentages calculated on the Prices of the Products stored (Sect. 2.a above) apply from the date of delivery (Sect. 1.c above).
- d. All Prices and fees are exclusive of taxes, duties, levies, fees or any other charges, which shall exclusively be borne by Reseller.

### 3. ORDERS

- a. TBS shall only manufacture and deliver Products and services, if and to the extent that Reseller has placed a corresponding order in writing, signed by a duly authorized representative of Reseller and specifying at least (i) the name or number of article (ii) it's version (iii) the date of order (iv) the price per unit for Products ordered, (v) the number of units ordered and (vi) the preferred time of delivery

- b. All orders are subject to written acceptance by TBS specifying the Prices and date of Delivery, which acceptance, in TBS exclusive discretion, shall be issued by TBS within seven (7) working days from the receipt of any Order complying with Sect. 3.a above ("Order Confirmation").
- c. If the Prices and/or date of Delivery shown in the Order Confirmation deviate from the Order, Reseller shall have the right to terminate its Order in writing within seven (7) working days from the receipt of the Order Confirmation, in the absence of which termination the Order shall be legally binding with the content laid down in the Order Confirmation.

### 4. DELIVERY

- a. Save where otherwise agreed to by and between TBS and Reseller in writing, Delivery shall be completed once the Products are made available to Reseller at TBS' contract manufacturer premises in Switzerland (ex works according to Incoterms 2010) in secondary packaging adequate for road transport and Reseller has been informed thereof.
- b. TBS shall make reasonable efforts to meet Reseller's delivery requirements; if TBS is unable to meet Reseller's delivery requirements, alternative arrangements may be agreed. In the absence of such agreement and in case of late delivery of more than four (4) weeks of the agreed delivery date, caused at least by TBS' negligence, Reseller shall be entitled as its sole and exclusive remedy to cancel the Order.
- c. In case of a default in the Delivery caused by TBS at least negligently and in the event Reseller has not cancelled the order as set forth under Sect. 4 b above, Reseller shall be entitled to ask, from the third week of the default, for compensation of up to 0.5 % per week of the Price of the delayed Products, which compensation shall in no case exceed a total of 5 % of the Price for the defaulted charge; this compensation shall be Resellers' sole and exclusive remedy to the exclusion of any other claim or remedy for or in connection with any default.



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d. Save where the delay is caused by the occurrence of obstacles which despite all reasonable efforts could not be hindered, Reseller shall be entitled to withdraw from its Order requesting repayment of any payments already made if a defaulted Delivery has not been made up for within an additional deadline of no less than twenty (20) working days set by Reseller to TBS in writing. Withdrawal from the Order shall be Resellers' sole remedy to the exclusion of any other claims or remedies, save where TBS can be proven to have acted at least gross negligently.

### 5. SHIPMENT AND RISK OF LOSS

- a. If so requested by Reseller, TBS shall organize transport and shipment according to TBS's standard commercial practice, whereby each and any related cost shall be invoiced to and borne by Reseller without surcharge.
- b. Risk of loss and damage will pass to Reseller per Incoterms 2010, EXW.

### 6. ACCEPTANCE

Acceptance of Products by Reseller occurs upon Delivery and will be presumed unless Reseller issues a claim for wrong shipment (products, quantity and address) or damaged Products within twenty (20) days from the date of Delivery.

### 7. PAYMENT AND TITLE

- a. All payments have to be effected by Reseller in Swiss Francs (CHF) within thirty (30) days from TBS's invoice date, unless otherwise agreed to in writing.
- b. Should, in TBS's opinion, Reseller's financial condition, previous payment record or the nature of Reseller's relationship with TBS have changed, TBS may modify payment terms at any time and in particular demand prepayment.
- c. For any default in payment, Reseller shall pay interest in the amount of 4 % on top of the respective three-months-Libor CHF of the Swiss National Bank, from the due date (Sect. 7.a above).
- d. TBS may discontinue performance if Reseller fails to pay any sum due, or fails to perform under this or any other agreement if, after ten (10) days written notice, the failure has

not been cured.

- e. Title to Products as well as each and any ownership right in or corresponding to Products shall remain with TBS until such time that the price for the respective Order has been paid in full to TBS. Reseller shall be entitled to resell Products to end customers. Upon Delivery, Reseller assigns for security each and any claim arising out of the resale of Products to Reseller's customers to TBS; Reseller shall be entitled to claim and receive the purchase price from its customers until such time that TBS chooses to reveal the assignment, which TBS is only entitled to do once the conditions in Sect. 7.d above are met.

### 8. WARRANTY

- a. TBS warrants Products against nonconformity with specifications (published by TBS or expressly agreed with Reseller in writing) as well as defects in materials and workmanship for eighteen (18) months from date of Delivery. In case of repairs being carried out, six (6) month warranty is granted on the repaired or exchanges parts, which period shall in no case expire prior to the eighteen (18) months warranty period stipulated in the previous sentence of this Sect. 8.a.
- b. In case of warranty, TBS shall repair and return to Reseller, free of charge, each and any part of a Delivery proven to be damaged within the meaning of Sect. 8.a above as soon as possible, but in no case later than within twenty (20) working days from the receipt of the Product. Reseller shall advance any shipping charges (including all duties, levies, fees and taxes) for Products returned to TBS for warranty service. For valid warranty claims, TBS shall reimburse Reseller for prepaid freight charges and return Products to Reseller at TBS's expense.
- c. If more than five percent (5%) of all Products covered by a single Order prove defective within the meaning of Sect. 8.a above, TBS shall provide Reseller with a plan for the elimination of the defects; if these defects were caused by TBS at least negligently, TBS shall bear the corresponding costs of Reseller.
- d. Should, in TBS view, no repair be possible or feasible, Reseller shall be entitled to a refund of the purchase price upon prompt return of



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- the Product beyond repair.
- e. Both TBS and Reseller shall be liable for damages they at least negligently caused the other Party up to a maximum amount of CHF 50,000.00 per occurrence of damage, but in no case exceeding an absolute maximum amount of CHF 150,000.00 per calendar year.
  - f. For consequential, secondary or indirect losses of Reseller – in particular losses not concerning the Products themselves like standstill of production, losses due to impossibility to use the Products, losses due to the cancellation of contracts, lost profits as well as claims based on incorrect advice or any other ancillary duties – TBS shall only be liable if and to the extent that TBS can be proven to have acted gross negligently or by willful misconduct.
  - g. The above warranties do not apply to defects resulting from unauthorized, improper or inadequate maintenance or repair; use of Reseller or third party software, interfacing or supplies; unauthorized modification; improper use or operation outside the specifications for the Product; abuse, negligence, accident, loss or damage in transit or improper site preparation.
  - h. **THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. TBS SPECIFICALLY AND EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
9. **LICENSES**
- a. Reseller may transfer embedded software only upon transfer of the associated Device. All license terms will be binding on involuntary transferees, notice of which is hereby given. Reseller's license will automatically terminate upon transfer.
  - b. The software is owned and copyrighted by TBS or by third party suppliers. Reseller's license confers no title or ownership and does not constitute a sale of any rights in such software, its documentation, or the media on which they are recorded or printed. Third party suppliers may protect their rights in the software in the event of any infringement.
  - c. Reseller shall adhere to the licensing agree-

- ments with third party licensors.
- d. Reseller will not disassemble or decompile the Software without TBS's prior written consent. Where customer has other rights under statute, customer will provide TBS with reasonably detailed information regarding any intended disassembly or decompilation. Reseller will not decrypt the Software unless necessary for legitimate use of the Software.
10. **INTELLECTUAL PROPERTY RIGHTS**
- a. TBS shall retain each and any right and title to such intellectual property rights, documents, software programs and other tools it provided Reseller with under or in connection with these Terms & Conditions or any transaction hereunder. Reseller acknowledges these rights and titles and shall not, without having obtained prior written approval by TBS, make any use of such intellectual property rights, documents, software programs or tools outside the scope of these Terms & Conditions and outside the purpose for which they have been made available.
  - b. TBS shall assist Reseller in any claim against Reseller that Products delivered under the TBS Terms & Conditions at hand infringes a patent, utility model, industrial design, copyright, trade secret, trademark or the like in the country where Products are used or sold, provided that Reseller
    - (1) was not at fault; and
    - (2) promptly notifies TBS in writing of any such claim; and
    - (3) cooperates with TBS in, and grants TBS sole control of the defense or settlement of any such claim.
  - c. TBS assistance shall, in TBS sole and exclusive discretion, consist in
    - (1) either defense / settlement proceedings with TBS paying infringement claim defense costs, settlement amounts and court awarded damages
    - (2) or in refunding Reseller's purchase price upon return of the Product, if within one year of delivery, or the Product's net book value thereafter.
  - d. TBS has no obligation for any claim of infringement arising from
    - (1) TBS's compliance with Reseller's designs, specifications or instructions;



- (2) TBS's use of technical information or technology provided by Reseller;
- (3) Product modifications by Reseller or any third party;
- (4) Product use prohibited by specification or related application notes.
- e. This Sect. 10 is exclusive and comprises TBS's entire liability for claims of intellectual property infringement; no other liability, whether written or oral, is expressed or implied.

### 11. LIMITATION OF REMEDIES AND LIABILITY

- a. To the extent that TBS is held liable to Reseller, TBS's liability is limited to (i) payments described in Sect. 8 and 10 above, and (ii) in the event of direct damages to tangible property or any other direct damages for any claim based on a material breach of these Terms & Conditions of Sale, up to a maximum amount of CHF 100,000.00 per occurrence of damage, but in no case exceeding an absolute maximum amount of CHF 300,000.00 per calendar year.
- b. Notwithstanding Sect. 11. a above, in no event will TBS or its affiliates, subcontractors or suppliers be liable for (i) actual loss or direct damage not listed in Sect. 11.a above, nor for (ii) damages relating to Reseller's procurement of substitute products or services (i.e., "cost of cover") or (iii) for incidental, special or consequential damages, including downtime costs or lost profits.
- c. TBS's statutory unlimited liability for damages based on TBS's willful misconduct or for bodily injuries caused by at least TBS' negligence shall remain unaffected.

### 12. MISCELLANEA

- a. Transactions may be conducted in written form duly signed or through electronic methods or other means not being rejected by the other Party within due time.
- b. TBS will not be liable for performance delays or for nonperformance, due to causes beyond its reasonable control, including, but not limited to cases of Force Majeure.
- c. If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed or its assets assigned, the other party may cancel any obligations not

- yet fulfilled.
- d. If Reseller exports, reexports or imports Products or services purchased hereunder, Reseller assumes exclusive, full and undivided responsibility for complying with applicable laws and regulations, and for obtaining required authorizations. TBS may suspend performance if Reseller is in violation of applicable regulations.
- e. These TBS Terms & Conditions have been construed under and shall be interpreted in accordance with the material laws of Switzerland to the exclusion of the Convention on the International Sale of Goods (CISG); the same holds true for any disputes arising under or in connection with these TBS Terms & Conditions or any actions, transactions or performances carried out hereunder.
- f. The courts of Pfäffikon, Switzerland, shall have exclusive jurisdiction for each and any claim or dispute arising out of or in connection with these TBS Terms & Conditions or any actions, transactions or performances carried out hereunder.
- g. These TBS Terms & Conditions of Sale constitute the entire agreement between TBS and Reseller, and supersede any previous communications, representations or agreements between the parties. However, if and to the extent that TBS and Reseller have entered into a longterm distribution relationship by mutually signing a written Framework Agreement, the provisions of such an Agreement shall take precedence over the Terms & Conditions at hand if and to the extent that they deviate from these Terms & Conditions.