



MODOR – Smart Systems

General Terms and Conditions of Sales and Services

(November 2018 Version)

1. Applicability and Validity

Any sale, repair, services, rental and/or other customer support services (hereinafter referred to as “Work”) rendered by MODOR (hereinafter referred to as “Contractor”) shall be supplied or made in accordance with the General Terms and Conditions set forth herein, which together with the quotation(s) of Contractor, if any, shall constitute the complete agreement of the Contractor and Customer resulting from the acceptance of the quotation of the Contractor or of a signed order from the Customer and supersede any other agreement or representation, verbal or in writing with respect to the subject matter herein.

These General Terms and Conditions shall be valid in all respect and any additional or different terms contained in the Customer’s order or response to quotation or any other document shall be deemed objected to by the Contractor without need of further notice and shall not be effective of binding unless agreed to in writing by Contractor. Customer’s assent to the General Terms and Conditions set forth herein shall be conclusively presumed from Customer’s failure to object thereto in writing as well as any direction from the Customer to Contractor to proceed with the order or Customer’s acceptance of all or part of the products or services ordered. General or special terms and conditions stipulated by the Customer which are in contradiction with these terms and conditions shall be valid only if and to the extent they have been accepted by the Contractor in writing.

Contractor shall have the right to subcontract any or all work covered by the Contract. Any assignment of this Contract or any rights hereunder by Customer without the prior written consent of the Contractor shall be void. Should any provision herein prove to be invalid or not enforceable by a competent court, such invalidity or non-enforceability shall not affect the validity of the remaining terms and conditions.

The Contractor and the Customer shall use their best efforts to agree on a provision that has commercially and legally the most similar effect as the invalid or non-enforceable provision. In the event that Product includes software, the software is licensed to Buyer in object code form only in accordance with In Seller’s standard Software License Terms that are included below.

2. Performance of Work

The Contractor shall perform the Work in accordance with the Terms and Conditions set forth herein, and in any other documents which refer to the Work and are signed by both the Contractor and the Customer (hereinafter together referred to as "Contract").

3. Price

Prices are stated in Euros and except as may be specifically provided on Contractor's Proposal or Confirmation of Order or as may be otherwise agreed upon in writing by Contractor and Customer. The price stated on Contractor's Proposal or Confirmation of Order is net without any deductions whatsoever. Contractor’s Quotation shall expire on the expiration date indicated on said Quotation, or, if no date is specified, then thirty (30) days after the date of the Quotation. Any Quotation may be modified or withdrawn by Contractor, in whole or in part, at any time prior to acceptance of an order by Contractor.

All additional costs, including (but not limited to) charges for freight, packing, carriage, insurance, customs duties, fees for export, transit, import and such other permits and certificates as may be necessary, any federal, state or local property, license, privilege, sales, use, excise, gross



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receipts or other like taxes which may now or hereafter be applicable, shall be borne by the Customer.

If charges for packing, freight, carriage, insurance, customs duties or other additional costs are separately stated on Contractor's Proposal or Confirmation of Order and included in the price stated thereon, Contractor reserves the right to adjust its price, should the costs on which such additional charges are based be modified. In addition, an appropriate price adjustment shall apply in case the work completion date and/or shipping date has been subsequently extended due to any reasons stated in Art. 5 hereinafter.

4. Customer's Obligations

The Customer shall take all necessary and reasonable measures to support Contractor in the execution of the Contract. At the request of Contractor, Customer will expeditiously provide Contractor all information regarding the Equipment or part thereof, such as but not limited to logistic data, monitoring data, operational data, log sheets, etc. The Customer shall (a) immediately notify Contractor of any contamination that may exist in any part of its facility or on the Equipment where Work may or is being performed where such contamination may be due to any hazardous material, including but not limited to, asbestos containing parts, insulation or gaskets or nuclear radiation and (b) be obligated, at its own expense, to decontaminate its facility or parts of the Equipment to be repaired or replaced hereunder, which may be contaminated due to any hazardous material, so that such hazardous material shall be reduced or eliminated to a level in which the facility is safe to occupy and/or such parts may be handled and/or shipped in a safe manner and in accordance with all applicable laws and regulations and industry accepted standards without special licensing from any Government Regulatory Authority. Notwithstanding anything contained in this Contract to the contrary, until said decontamination or radioactive environment has been reduced to a safe, legal and industry accepted standard for occupancy by Contractor's personnel without the need for special protective clothing, the Contractor shall be under no obligation to remove, disassemble, repair, reassemble or reinstall or provide any other service to such Equipment.

5. Work Completion/Shipping

The dates specified for Work completion and/or shipping on Contractor's Proposal or Confirmation of Order are "the best estimate" and are based upon prompt receipt of necessary goods, parts and information. These dates shall be reasonably extended for a minimum time period equalling the length of delay if; (a) information required by Contractor from Customer to execute the order is not received in a timely manner or if changes are made which delay Work completion and/or shipping as agreed upon by Contractor and Customer; (b) Contractor is not able to complete or ship the Work by reason of hindrances which, despite due care, Contractor cannot avoid (inclusive of those occurring at suppliers or third parties), such as Force Majeure event as defined in Article 11 hereof; delayed or deficient delivery of delivered goods, official or other measures of whatever kind, transport difficulties; inability to obtain necessary labour or materials from usual sources or (c) if Customer or a third party is behind schedule with work which it has to carry out, or late in fulfilling its contractual obligations (including, but not limited to, failure by Customer to observe terms of payment). Notwithstanding anything contained herein to the contrary, Contractor shall not be liable for any loss or damage to Customer resulting from any delay in delivery, whether due to non-conformance as mentioned above or otherwise.

The Customer must provide its own insurance. Title and risk of loss or damage shall pass from Contractor to Customer upon delivery by Contractor to the possession of the carrier. Any claims for



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loss, damage, or misdelivery shall be filed with the carrier. Unless otherwise specified in writing by Contractor, Customer is responsible for all site preparation and for receiving, storing, installing, starting up and maintaining all Product. In its sole discretion, Contractor may provide a quotation for services to assist Customer in some or all of these functions if requested.

6. Termination

6.1 Contractor's Default

In the event that the Contractor fails to comply with a material obligation in connection with the performance of the Work ("Contractor's Default"), the Customer shall give the Contractor written notice of Contractor's Default, specifying its nature and stating that the Customer intends to terminate the Contract. If the Contractor fails to remedy the Contractor's Default or fails to offer a reasonable plan to cure the Contractor's Default within a reasonable time after the receipt of said notification, but not more than thirty (30) days after Customer's written notification, the Customer may terminate the Contract.

6.2 Customer's Default

In the event the Customer fails to comply with a material obligation in connection with the Contract, including but not limited to Customer's failure to comply with Article 4 above, or if the Customer fails to fulfil its payment obligations in accordance with Article 12 below (hereinafter collectively referred to as "Customer's Default"), the Contractor shall give the Customer written notice of Customer's Default, specifying its nature and stating that the Contractor intends to interrupt the Work or to terminate the Contract. If the Customer fails to remedy the Customer's Default within a reasonable time after the receipt of said notification, including the failure of the payment of Contractor's invoice not later than five (5) days after Contractor's reminder, the Contractor may interrupt the Work or forthwith terminate the Contract.

6.3 Payments

6.3.1 In the event the Contract is terminated by the Contractor due to Customer's Default, the Customer shall pay to the Contractor

- a) the agreed prices for the portion of the Work completed;
- b) the costs and expenses incurred by the Contractor directly connected with the Work in addition to that in a) above under the Contract prior to the date of termination; and
- c) Contractor's customary profit; and such other cost and expenses, including any cancellation charges

under subcontracts, as the Contractor may incur in connection with such termination.

6.3.2 In the event the Contract is terminated by the Customer due to Contractor's Default, the Contractor shall be entitled to payments under (a) and (b) above only.

7. Title and Risk of Loss or Damage

The title and right of possession to equipment repaired or to be repaired remains with the Customer, subject to applicable lien rights of Contractor. Customer agrees that Contractor shall retain a security interest in the equipment repaired hereunder to secure any portion of the price not paid when due, and will, on request, execute a security agreement in such form as is required by Contractor which maybe filed with appropriate local and state authorities.

The ownership of the replacement part(s) shall be transferred to Customer after Contractor has received full payment in accordance with the Contract.

Risk of loss or damage to replacement part(s) and/or repaired Equipment shall pass from Contractor to Customer upon delivery of such replacement part(s) and/or repaired Equipment EXW (ex-works)



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as per latest INCOTERMS at Contractor's facility, regardless of whether title has passed to or already rests in Customer, transport is arranged or supervised by Contractor.

If delivery of the replacement part(s) and/or repaired Equipment is delayed at the request of Customer or due to other reasons beyond Contractor's reasonable control, the risk of loss on said replacement part(s) and/or repaired Equipment shall pass to Customer at time of the original anticipated date of delivery of the replacement part(s) and/or repaired Equipment at EXW (ex-works) as per latest INCOTERMS at Contractor's facility. From this time forward the replacement part(s) and/or repaired Equipment shall be stored and insured for the account of and at the risk of Customer.

8. Warranty

8.1 The Contractor warrants that the Work will be performed in a workmanlike manner and will be as described in the Contract. The Contractor's warranty period for delivered goods shall be twelve (12) months from date of invoice.

Contractor delivered consumables, Software and provided services are warranted for a period of ninety (90) days from the date of shipment or completion, as applicable.

The Contractor shall, in complete fulfilment of all its liabilities under this warranty, if within the warranty period, given prompt written notice by the Customer, correct at its expense and at its option by repair or replacement any non-conformity which shall appear under proper storage, installation, maintenance and use of supplied parts and/or services performed. No Work furnished by Contractor shall be deemed to be defective by reason of normal wear and tear, failure to resist erosive or corrosive action of any fluid or gas, Customer's failure to properly store, install, operate or maintain the Work in accordance with good industry practices or specific recommendations of Contractor, or Customer's failure to provide complete and accurate information to Contractor concerning the operational application of the Work. The Customer shall make the supplied part(s) available for correction. The warranty contained in this Article will terminate immediately, if the Customer or a third party undertakes any modifications or repairs without Contractor's approval or if the Customer, in case of a defect, does not immediately take all appropriate steps to mitigate damages and notify the Contractor in writing of its obligations to remedy such defect. Correction of non-conformities in the manner and for the period of time provided above shall constitute fulfilment of all liabilities of the Contractor to the Customer with respect to such Equipment. Contractor shall not be liable for costs of removal, reinstallation, or gaining access. The re-performance, repair or replacement of the Work or spare or replacement parts by Contractor under the provisions of the Warranty section of this Contract shall constitute Contractor's sole obligation and Customer's sole and exclusive remedy for all claims of defects regarding the Work.

8.2 Contractor shall not be liable for any loss or damage arising from any failure by it to discover or repair latent or inherent defects in the design of the Equipment.

ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY ARE HEREBY DISCLAIMED. CONTRACTOR MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WITH RESPECT TO THE EQUIPMENT OR SERVICES OTHER THAN AS SPECIFIED IN THIS SECTION 8.

9. Software License

9.1 For purposes hereof, "Software" means the computer programs included in the Product at delivery, together with all codes, techniques, software tools, formats, designs, concepts, methods,



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and ideas associated with those computer programs. The term also includes all copies of any part of the software, as well as the manual(s) and printed materials provided by Seller.

9.2 Contractor grants Customer a non-exclusive, non-transferable license to use the Software, in object code form only, according to the terms set forth below. Customer may operate the Software only (a) in conjunction with and as part of the Product; (b) in the manner in which it is intended by Contractor; and (c) at Customer's plant site where the Product is first used. Contractor may negotiate with Customer separate licenses to use the Software at other plant sites. Customer's use of Software shall be governed exclusively by Contractor's and/or an third party owner's applicable license terms.

9.3 Customer shall not (a) make the Software available to any person or entity other than its employees, who must use the Software only as specified above; (b) modify the Software or merge it with another program; (c) reverse engineer, disassemble, decompile, or make any attempt to discover the source code of the Software; (d) translate or create derivative works based on the Software; (e) remove, obscure, or alter any notice of the patent, copyright, or other proprietary rights related to the Software; (f) sub-license, sell, lend, rent, or lease any portion of the Software; (g) copy any portion of the Software; (h) operate the Software other than in conjunction with operation of Product; or (i) transfer the Software in violation of applicable European Export laws and regulations.

9.4 The Software involves valuable proprietary rights to Contractor and others. There is no transfer to Customer of any title to or any ownership of the Software or any patent, copyright, trade secret, trade name, trademark, and other proprietary rights related to the Software, regardless of the form in which they exist. Contractor may at any time replace, modify, alter, improve, enhance, or change the Software.

9.5 Both the license and Customer's right to use the Software terminate automatically if Contractor violates any of these Terms and Conditions. In the event of termination, Customer must immediately return, or destroy, all copies of the Software.

10. Limitation of Liability

Notwithstanding anything to the contrary in this contract, including all the documents making part thereof and to the maximum extent permitted by the law, in no event shall Contractor be liable to the Customer for any loss of profits or interruption of production, loss of opportunity or business, any indirect, punitive, special, incidental or consequential damages in connection with this Contract, or claims by the Customer's client for such damages, whether such liability is based on contract, tort (including negligence), statute or any other basis of legal liability. Contractor's liability with respect to any contract or sale or anything done in connection therewith, whether such liability is based on any contract, indemnity, tort (including negligence), warranty, strict liability or otherwise, shall not exceed the Contract value of the Work upon which such liability is based. All such liability shall terminate upon the expiration of the warranty period, if not sooner terminated.

The remedies of the Customer set forth in the Contract are exclusive and in lieu of any other right or remedy.



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11. Force Majeure

The Contractor shall not be liable for any non-performance, loss, damage, or delay if and to the extent that such delay or failure is caused by a Force Majeure Event. For the purpose of this clause, “Force Majeure Event” means an exceptional event or circumstance, which is beyond the reasonable control of the Contractor, including but not limited to war or other action of military forces, terrorism, riot, strikes (exclude Contractor’s internal employee strike), civil commotion, sabotage, vandalism, accident, fire, flood, explosion, acts of God, legislative or administrative interference, embargoes, refusal to grant export license, governmental actions, or any causes, whether or not of the same class or kind as those specifically named above. In the event of delay in performance due to any such cause, that date of performance or time for completion will be extended to reflect the length of time lost by reason of such delay.

If a Force Majeure event lasts more than sixty (60) days, either Contractor or Customer may terminate the Contract by giving seven (7) days written notice to the other party. In this case, Contractor shall be entitled to the payment for the Work already performed prior the termination and the documented expenses for non-cancellable procurements. Customer shall have the right to receive all Work for which it has paid.

12. Terms of Payments

12.1 The invoices shall be deemed correct unless the Customer notifies the Contractor otherwise in writing (email) not later than seven (7) days after the date of the invoice. Except as otherwise provided by Contractor's Proposal or Confirmation of Order, payments shall be made by the Customer net cash without deduction upon receipt of the invoice to such bank accounts and in such currency as stated in the invoice. All instalment deliveries shall be separately invoiced and paid for without regard to subsequent deliveries.

12.2 The Contractor is entitled to charge interest at a rate of 1% per month on amounts not paid within thirty (30) days from the date of the invoice.

12.3 The Contractor shall be entitled to immediately stop or suspend the performance of its Work, in the event the Customer fails to make any payment due.

13. Changes in Product design/ Proprietary Information

Contractor reserves the right to change, discontinue or modify the design and/or construction of any of its products and to substitute material equal to or superior to that originally specified.

All information, including plans, designs, drawings, specification and data, furnished or prepared by Contractor specifically in connection with its performance hereunder, shall be deemed provided to the Customer on a confidential basis and shall remain Contractor's exclusive property. Such materials have been developed at Contractor's expense and contain Contractor's trade secrets. Customer shall not copy or reproduce such information for any purpose other than operation and maintenance except as may be approved by Contractor in writing. Customer also shall not, either directly or indirectly, communicate to a third party or use such information or any data derived therefrom for any purpose other than as set forth herein without the prior written consent of Contractor. Any and all such information submitted in connection with a Proposal which does not result in an order shall be returned to Contractor upon request.



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14. Tooling

Charges for tools do not convey ownership or the right to remove from Contractor's premises. Tool charges if shown on the invoice constitute only a part of the actual tool cost. Contractor assumes the remainder of the original costs and the cost of maintenance. Customer, however, may purchase such tools upon request, at the discretion of the Contractor.

15. Patents

Contractor warrants that the goods and any component part thereof, in the particular form sold by Contractor, shall be delivered free of any rightful claim of any third party for infringement of any patent published or granted in the country of the Work to be used before the Contract effective date. If notified promptly in writing, and given authority, information and assistance, Contractor shall defend or may settle, at its expense, any suit or proceeding against Customer so far as based on a claimed infringement which would result in a breach of this warranty, and Contractor shall pay all damages and costs awarded therein against Customer due to such breach. The foregoing states Contractor's entire liability for patent infringement.

The preceding paragraph shall not apply to any goods and any component part thereof manufactured to Customer's design. As to any such goods, component part or use in such combination, Contractor assumes no liability whatsoever for patent infringement and Customer shall indemnify and hold Contractor harmless against any infringement claims arising therefrom.

16. Export-control

Customer hereby represents and warrants that it is familiar with, and will comply in all respects with Dutch and EU laws, regulations and administrative requirements applicable to this Contract concerning the export or rental of equipment, including, but not limited to, EU Regulation 428/2009, EU Regulation 423/2007, relation to export control, anti-boycott and trade sanctions matters. Customer is aware that monitoring systems supplied by MODOR are subject to above mentioned export control.

Customer agrees to indemnify and hold Contractor harmless from any costs, penalties or other losses caused by, or related to, any violation or breach of the warranties contained in this provision.

This article 16 shall survive the termination of the relevant purchase order.

17. Place of Jurisdiction and Applicable Law

This Contract shall be governed by Dutch law. Any dispute arising out of this Contract that cannot be resolved amicably between the parties within forty-five (45) days of written request by one party to the other, shall be finally resolved by binding arbitration conducted in English in Enschede, the Netherlands under the Rules of Arbitration of the International Chamber of Commerce. The arbitrators are not entitled to award damages in excess of compensatory damages. The arbitration cost shall be shared by the parties equally. Judgment upon the award may be entered in any court having jurisdiction.

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