

APPENDIX 1 – EQUIPMENT TERMS AND CONDITIONS [version 1.1/2018]

These Equipment Terms and Conditions v.1.1 (**Equipment Terms and Conditions**) are an integral part of the Contract between Groupe T2i Suisse SA, Techno-pôle 1 – 3960 Sierre (**Service Provider**) and its customer as indicated in the Order Form (**Customer**, and jointly with the Service Provider, the **Parties**).

I. GENERAL

1. Definitions

The capitalised words not defined in these Equipment Terms and Conditions have the meaning given to them in the Order Form.

2. Scope and acceptance

2.1 These Equipment Terms and Conditions apply to the supply of the Equipment indicated in an Order Form signed between the Service Provider and the Customer, as well as any other equipment ordered by the Customer not covered by the Service Provider's special contractual clauses.

2.2 By signing the Order Form or ordering equipment from the Service Provider that is not specified in an Order Form, the Customer agrees to be bound by these Equipment Terms and Conditions, in their most recently published version.

3. Service provider obligations

3.1 **Principles.** Subject to the Customer fulfilling its obligations under the Contract, notably the payment of Fees, the Service Provider undertakes to supply the Equipment specified in the Order Form.

3.2 **Sale or lease.** As stipulated in the Order Form, the Equipment is either:

- a. sold to the Customer, in which case art. 14 below applies in addition to the clauses of this first part (General) of the Equipment Terms and Conditions;
- b. leased for a given period, in which case art. 15 below applies in addition to the clauses of this first part (General) of the Equipment Terms and Conditions.

3.3 **Associated Services.** In agreement with the Customer, the Service Provider may provide support and/or maintenance services, as well as other services related to the Equipment, such as correcting defects and other errors affecting the Equipment aside from the cases covered by the warranty in art. 14.1 of these Equipment Terms and Conditions, provided that an ad hoc contract relating to these services has been signed between the Parties. These services are excluded from the scope of this Contract.

4. Performance, Delivery, Inspection, Supply times

4.1 **Transfer of risks and delivery.** Risks transfer EXW "Ex Works" (Service Provider's registered office) (Incoterms 2010), irrespective of the place of delivery. The Customer is responsible for integrating and configuring the Equipment. However, the Service Provider may agree to undertake one or other of these services subject to the Parties signing an *ad hoc* contract in this regard.

4.2 **Inspection and acceptance.** The Customer is required to inspect the Equipment with all due care and attention immediately upon receipt or no later than 10 days after delivery. Unless a notice of defects is sent by the Customer by registered post to the Service Provider within this time, detailing the defects, the Equipment is deemed to be unconditionally accepted by the Customer.

4.3 **Hidden defects.** Defects that appear at a later date (hidden defects) must be notified to the Service Provider by registered letter within 10 days, failing which they are deemed to have been accepted.

4.4 **Supply times** The Service Provider shall make its best endeavours to supply the Equipment within the times indicated in

the Order Form. However, supply times are given purely as a guide, unless it is expressly indicated that they are binding.

5. Customer obligations

5.1 **Assistance.** The Customer provides all necessary or useful assistance to the Service Provider to enable the performance of the Contract. In particular, the Customer:

- a. shall provide any information it might know that is necessary or useful to the performance of the Contract, without necessarily being requested to do so;
- b. shall promptly follow up any request made by the Service Provider regarding such information;
- c. shall allow the Service Provider access to its premises and infrastructures, if such access is necessary or useful for the performance of the Contract, such as to monitor said performance, and shall provide all appropriate means and resources (e.g. equipped offices, networks, access and so on); and
- d. shall follow up any reasonable instruction and/or order made by the Service Provider related to the Equipment.

5.2 **Responsibility.** The Customer is solely responsible for operations carried out by its own staff, and the installations on which the Equipment is deployed or connected.

6. Financial Terms

6.1 **Fees.** The Customer undertakes to honour the payments stipulated in the Order Form or, in the absence of an Order Form, the payments agreed with the Service Provider (**Fees**).

6.2 **Payment.** Unless stipulated otherwise in the Order Form, the Fees relating to Equipment are invoiced in full upon delivery and must be paid by the Customer within 10 days from the invoice date. The Service Provider can however request that Fees are paid (wholly or partially) before the delivery of the Equipment. The Order Form may set out a payment schedule for Fees or recurrent Fees.

6.3 **Taxes.** The Fees due under the Contract are exclusive of tax, notably VAT. Such taxes are payable exclusively by the Customer and must be settled directly with the relevant authorities.

6.4 **Currency** Any sum relating to the Contract is expressed, and must be paid, in Swiss Francs, unless expressly indicated otherwise.

6.5 **Shipping costs.** Unless stipulated otherwise in the Order Form concerned, any packaging or shipping costs or insurance premiums for policies taken out to cover the shipping of Equipment are not included in the Fees and are payable by the Customer. Such costs are invoiced to the Customer if the Service Provider has agreed to advance them.

6.6 **Other Costs.** The Customer will reimburse the Service Provider for all reasonable costs and expenses incurred in relation to the supply of the Equipment.

6.7 **Late payment** If any sum due by the Customer to the Service Provider is wholly or partially unpaid on its due date, the Service Provider will be entitled to:

- a. refuse to deliver all or some of the Equipment and/or
- b. subject to 30 days' notice sent to the Customer (including by email), terminate the Contract with immediate effect.

6.8 **Risk of insolvency.** In accordance with article 83 para 1 of the Swiss Code of Obligations, if the Service Provider's rights are put at risk due to the Customer's insolvency, particularly in the event of bankruptcy or unsuccessful attachment, the Service Provider can choose to

- a. refuse to fulfil the delivery until the Customer has paid the total amount of Fees for the whole duration of the Contract, or
- b. withdraw from the Contract.

7. Intellectual Property

7.1 **Trademark/logos.** The Customer shall not, directly or indirectly, engage in any act that might affect the validity or reputation of the intellectual property rights applied to and/or associated with the Equipment, including any trademark, logo or

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business name, or infringe said rights or harm them in any other way.

7.2 Third party claims

7.2.1 Duties of Customer. The Customer will immediately inform the Service Provider of any third party claim related to an infringement of intellectual property rights and undertakes to cooperate fully with the Service Provider in defending against such claims, including by providing all information available and other evidence reasonably required by the Service Provider.

7.2.2 Warranty Exclusion To the extent permitted by the applicable law, the Service Provider does not provide any warranty with respect to the ownership of the Equipment or the ownership of the associated intellectual property rights, particularly in the absence of third party claims to the Equipment. Art. 192 al. 1 of the Swiss Code of Obligations is expressly excluded. If and to the extent that such exclusion is not applicable in a specific case, the Service Provider can decide on one of the following options, with no obligation in this regard and excluding any other form of compensation:

- a. acquire the necessary rights to allow the Customer to continue using the Equipment concerned;
- b. modify the Equipment concerned so that it does not infringe or cease to infringe the rights of the third parties concerned;
- c. replace the Equipment concerned at all times by other reasonably equivalent equipment; or
- d. reimburse the Customer for any Fees that it might have already paid in relation to the Equipment concerned (subject to a deduction for the use of the equipment for the period concerned). Furthermore, the Service Provider shall not be held liable if the third party claims are related to actions or omissions on the part of the Customer or third parties, particularly the manufacturer of the Equipment.

7.2.3 Proceedings. The Service Provider will be entitled to assume control of any proceedings, direct any investigations and be responsible for the settlement of any claim in this context.

7.2.4 Liability. Art. 8 of these Equipment Terms and Conditions is moreover applicable.

8. Liability of Service Provider

8.1 Principle. To the fullest extent permitted by law, the Service Provider is exempt from any liability resulting in particular from any faults, errors or omissions by the Service Provider - except in the event of fraud or negligence on the part of the Service Provider -, as well as faults, errors or omissions by any subcontractors and causing any direct or indirect damage to the Customer.

8.2 Indirect damages. The Service Provider and its subcontractors, where applicable, are expressly released from liability for any indirect and/or consequential losses or damages sustained by the Customer and/or third parties. This includes loss of profits, business losses, revenue losses, customer losses, loss of opportunity, costs of obtaining replacement products/ services/ technology in connection with any Equipment or services related to any Equipment or any other service provided by the Service Provider, to the extent that such exclusion is permitted under applicable law.

8.3 Limitation. In any event, the total amount of damages the Service Provider may be required to pay to the Customer throughout the term of the Contract is limited to the actual amount of damages sustained and proven by the Customer, but in all cases to the amount corresponding to the average Fees actually paid by the Customer to the Service Provider under the Contract up to the prejudicial event over a period of 12 months prior to the prejudicial event, to the extent that such limitation is permitted under applicable law.

9. Confidentiality

9.1 Principle. Each Party undertakes as follows:

- a. to keep confidential all information it receives from the other Party and in particular,

- b. not to disclose the other Party's confidential information to any third parties, other than employees or agents on a need to know basis; and

- c. to only use the other Party's confidential information for the purposes of exercising its rights and fulfilling its obligations under the Contract.

9.2 Exclusions. Notwithstanding the foregoing, neither of the Parties will have any obligation concerning information that:

- a. is or becomes public knowledge without the fault of the receiving Party,
- b. is independently developed by the receiving Party,
- c. is known by the receiving Party prior to disclosure by the other Party,
- d. is rightfully received from a third party that is not bound by an obligation of confidentiality, or
- e. is to be disclosed by court order or as otherwise required by law (in which case the information must only be disclosed to the extent required and after giving written notice to the disclosing Party).

9.3 Duration. The Parties' obligations relating to confidential information shall remain in force throughout the term of the Contract and after it ends, for as long as the information concerned remains confidential for the disclosing party and, in any event, for a period of 3 years after the Contract ends.

9.4 Return of documentation. Each Party shall return all copies of the other Party's confidential documents and materials when the Contract ends, for whatever reason, as soon as possible, but no later than ten (10) days after a Party requests this.

9.5 Third Parties The Parties undertake moreover to ensure that their staff, and any third party that might be involved in this Contract in any way, shall comply with these provisions.

10. Data protection

10.1 Roles of the Parties. If the Service Provider processes the Customer's personal data for the purposes of the Contract, the Customer is the data controller. Any processing of the Customer's personal data by the Service Provider under this Contract, including any processing by its subcontractors, is carried out on the Customer's instructions and is subject to the fulfilment of the Service Provider's obligations under this Contract (*data processor*).

10.2 Obligations of Service Provider. The Service Provider undertakes to comply with Swiss data protection legislation, as well as any other applicable legislation. If the General Data Protection Regulation (GDPR) is applicable, the Service Provider also undertakes to comply with the obligations mentioned in art. 28 point 3 GDPR.

10.3 Security. Each Party undertakes to implement, and ensure that its agents and subcontractors implement, appropriate technical, organisational and operational measures to guarantee the security of personal data, in particular to prevent any unauthorised access to personal data and any fraudulent use thereof, and to prevent the loss, undue alteration and destruction of personal data.

10.4 Obligations of Customer. The Customer is responsible for the quality, lawfulness and pertinence of its personal data processed for the purposes of the Contract and is accountable to the third parties concerned and the competent data protection authorities. In particular, the Customer undertakes to provide adequate information to the persons concerned, ask for their consent when this is necessary and ensure that their rights are respected (e.g. right of access and correction, right of objection, etc.), and fulfil all obligations vis-à-vis the competent data protection authorities.

10.5 End of Contract. If the Service Provider and/or its subcontractors are in possession of the Customer's personal data, the Service Provider will return or erase said personal data at the

end of the Contract (as chosen by the Customer) and, where applicable, will ensure that its subcontractors do likewise.

11. Term and Termination

11.1 Effective date The Contract comes into force on the signature of the Order Form by Parties or when the Equipment is ordered by the Customer, whichever of these events is first.

11.2 Term of contract. Failing early termination as stipulated herein, the Contract ends once the Parties' respective obligations have been completely fulfilled.

11.3 Special termination If one of the Parties seriously breaches its obligations under this Contract and fails to remedy this serious breach within 30 days from receiving a formal notice sent by registered letter, the other Party can automatically terminate this Contract with no additional time period.

11.4 Effects of termination. After the expiry of the Contract, the provisions relating to limitation of liability, confidentiality, data protection, payments and any other provisions which, by their nature, are intended to remain in force, shall continue to do so.

12. Non-solicitation

12.1 Unless agreed otherwise by the Parties, each Party undertakes not to employ or engage the services of any of the other Party's employees (whether directly or through an intermediary), unless it has said Party's prior written consent. This undertaking is valid throughout the term of the Contract and for 12 months after its expiry.

12.2 If one of the Parties fails to fulfil this obligation, it undertakes to compensate the other party by the immediate payment on request of a lump sum equal to 12 times the employee's gross monthly salary at the time of leaving.

13. Final Provisions

13.1 Assignment The Customer shall not assign all or part of its rights and obligations under the Contract, either by means of a permanent or temporary assignment, sub-licensing agreement or any other contract providing for the transfer of said rights and obligations.

13.2 Interpretation The headings of the sections and articles of this Contract are included for the purposes of convenience only and shall not affect its interpretation.

13.3 Force majeure. Neither Party shall be considered in breach of this Contract if the fulfilment of all or part of its obligations (with the exception of its payment obligations) is delayed or prevented owing to a force majeure event, such as particularly catastrophic natural disasters, wars, riots, strike or electrical/Internet failures, etc.

13.4 Severability. If any provision of this Contract is found to be invalid, non-binding or unenforceable, this shall not affect the other provisions which shall remain in full force and effect. However, the Parties may agree to replace the invalid provision(s).

13.5 Entire agreement This Contract constitutes the entire agreement between the Parties in relation to its subject matter and supersedes any prior or contemporary written or oral agreements relating to such subject matter.

13.6 Hierarchy In the event of inconsistency or conflict between the Equipment Terms and Conditions and the Order Form, the Equipment Terms and Conditions prevail, subject to any exceptions expressly stipulated as such in the Order Form.

13.7 Waiver The failure or delay by either Party to enforce any of the undertakings set out in this Contract, however frequently and for

however long, will not be deemed an amendment of this Contract or result in the creation of any rights.

13.8 Amendments. No amendment of this Contract shall be effective unless executed in writing and signed by both Parties.

13.9 Jurisdiction The ordinary courts of the Service Provider's registered office have exclusive jurisdiction in respect of any dispute between the Parties relating to the Contract.

13.10 Governing law. The Contract is governed by Swiss law, excluding its conflict of law principles and the Vienna Convention on Contracts for the International Sale of Goods.

II. ADDITIONAL CLAUSES

The additional clauses of this second section of the Equipment Terms and Conditions only apply to certain items of Equipment, depending on what they are intended for.

14. SOLD equipment

14.1 No warranty by Service Provider. To the extent permitted by applicable law, the Service Provider does not offer any warranty in relation to the Equipment. Art. 197 of the Swiss Code of Obligations is expressly and strictly excluded. In particular, the Service Provider does not warrant that

- a. the Equipment will be free from defects and/or errors or that any defects and/or errors that might appear will be corrected;
- b. the Equipment will function in combination with any hardware, third party software, system, service or data, supplied by the Service Provider or not; or that
- c. the Equipment will meet the Customer's requirements and expectations or it can be adapted or configured in accordance with the same.

14.2 Choice of Service Provider If and to the extent that the warranty exclusion mentioned in art. 14.1 of these Equipment Terms and Conditions is not applicable to a specific case due to mandatory law, the Service Provider can choose one of the following options for defects notified to it in accordance with art. 14.2 of these Equipment Terms and Conditions:

- a. correct the Equipment concerned within a reasonable period of time, subject to the Customer's full and active cooperation,
- b. replace the Equipment concerned by other equivalent equipment, or
- c. terminate the Contract, as far as the defective Equipment is concerned. These remedies are exclusive and substitute any other claim or action by the Customer. Any warranty is moreover excluded if the defect is linked to the Customer's failure to use the Equipment in compliance with the Contract or the Service Provider's instructions.

14.3 Manufacturer's warranty To the extent that the Equipment is covered by a third party warranty, including a manufacturer's warranty, and the Service Provider benefits from such warranty, the Service Provider undertakes to assign its resulting rights to the Customer, such that the Customer benefits from them, to the extent permitted and under the conditions stipulated by said warranty.

15. Leased equipment

15.1 Ownership. Equipment leased by the Service Provider to the Customer remains the sole and unique property of the Service Provider, which also holds all the intellectual property rights vis-à-vis the Customer. Insofar as this is strictly necessary to allow the Customer to use the Equipment in compliance with the Contract, the Service Provider grants it a non-exclusive and non-transferable licence for the associated intellectual property rights which can be revoked at any time.

15.2 Usage. Equipment leased by the Service Provider to the Customer can only be used in the context specified by the Order Form concerned or, if not specified by the Order Form, in accordance with the Service Provider's instructions, and in all cases in accordance with the intended purpose of the Equipment concerned and in accordance with the principles of good faith. If the

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Customer uses Equipment in breach of this art. 15.2, the Service Provider can terminate the Contract, in writing, with immediate effect, for the Equipment concerned, the Contract remaining in effect for any other Equipment. The Service Provider can however terminate the Contract in its entirety if the continuation of the Contract can no longer be imposed on it given the Customer's conduct.

15.3 Insurance The Customer is required to take out any appropriate insurance policy with a reputable solvent company to cover the risks related to the Equipment, during shipping and at any other time during the lease period. The Customer will provide a certificate of insurance, at the Service Provider's request, indicating that this obligation has been fulfilled.

15.4 Defects. In the event of defective Equipment notified by the Customer to the Service Provider in accordance with art 4.2 of these Equipment Terms and Conditions, the Service Provider can, at its sole discretion (i) repair or (ii) replace the Equipment concerned, or (iii) terminate the Contract insofar as it applies to the defective equipment. Any other warranty or liability on the part of the Service Provider is expressly excluded and art. 8 of these Equipment Terms and Conditions is moreover applicable. Any warranty is excluded if the defect is linked to the Customer's failure to use the Equipment in compliance with the Contract or the Service Provider's instructions.

15.5 Term of initial lease The lease is applicable for the term set in the Order Form - or if not indicated, for a period of one year - from its effective date as per art. 11.1 above.

15.6 Renewal of lease. At the end of the initial lease period, or any subsequent renewal period, the lease will be automatically renewed for successive one-year terms, unless terminated by either party by written notice sent 6 months before its expiry. Unless agreed otherwise, the terms applicable to renewal periods, including the financial terms, are those applicable at the time of the renewal.

15.7 End of lease. At the end of the lease period, whatever the reason, particularly in the event of termination of the Contract, the Customer shall immediately cease using the Equipment leased by the Service Provider to the Customer and return it to the Service Provider immediately, at its cost. The Equipment leased by the Service Provider to the Customer must be returned in good working condition and, except for the Defects notified to the Service Provider as per art. 4.2 of these Equipment Terms and Conditions, the Customer shall compensate the Service Provider for any damage to the leased Equipment.

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Confidential

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