

# EVVE LONG RANGE B.V.

## GENERAL TERMS & CONDITIONS

### A. INTRODUCTION:

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These General Terms and Conditions (hereinafter referred to as the "GT&C") shall apply to all the Products, Services and Software provided by EVVE LONG RANGE B.V. (hereinafter referred to as the "ELR"). The company ELR is registered in The Netherlands at the Chamber of Commerce under number 67664059 and having its registered office at Vlierberg 4-06A, 3755 BS Eemnes in The Netherlands.

### B. WHEREAS:

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- A. ELR is engaged in the sourcing, development, production, assembly and marketing of long-range camera systems, software, services and equipment, whether or not integrated with other radar and/or UAV and/or satellite systems for specialized surveillance applications and intelligence purposes (hereinafter collectively referred to as Surveillance Products).
- B. Various interested parties (hereinafter referred to as the "Client") wish to obtain relevant Surveillance Products from ELR.
- C. ELR is able to provide these Products, Services and Software to the Clients under the Articles described in these GT&C.

### C. ELR AND CLIENT HEREBY AGREE AS FOLLOWS:

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#### 1. DEFINITIONS

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The following wording, whenever used in the GT&C and/or Proposals, Agreements and/or Special Conditions and/or Specifications or in any correspondence between ELR and the Client will have the following meaning:

- a. "Authorized Party" will mean a party that is authorized by ELR to access and or use the Software, which is specifically mentioned in the Order Confirmation from ELR, whilst applying the appropriate security measures and adhering to the Articles of the GT&C.
- b. "Commencement Date" means the commencement date of the Contract, as is specified in the Order Confirmation from ELR and will refer to the date that the Contract between ELR and the Client will become effective.
- c. "Agreement" means written agreement between ELR and the Client for the supply of Products, Services and/or Software, which supplies are subject to the Articles of the GT&C and for the purpose of the GT&C. A Contract will specifically also include the Order Confirmation sent to the Client by ELR.
- d. "License Fee" means any amount agreed between ELR and the Client for the provision of and/or use of Products, Services and Software.

- e. "Order Confirmation" means a written confirmation by ELR sent to the Client confirming the Products, Services and Software which ELR has committed to provide to the Client and under what conditions ELR will be able to do so, and if appropriate any stipulations, specifications and/or Special Conditions that ELR has agreed to, whether these vary from the GT&C or not.
- f. "Product" means any physical equipment, which is provided by ELR to the Client under Contract between ELR and the Client, which will be subject to the GT&C.
- g. "Software" means any variable program, application, script or operating systems, middleware, utilities, applets, liteware, embedded software, presentation software, CAD/CAM software or any other programmed format or source code, in whatever form, provided by ELR that the Client is using, whether under Contract or not, in whatever format.
- h. "Site" means any location of the Client at which ELR Products, Services and/or Software shall be delivered to or are being used at.
- i. "Special Conditions" means any terms and conditions agreed by ELR and the Client that deviate from the normal conditions of GT&C and that have been confirmed in writing by ELR.
- j. "Specifications" means any document or any material which is in written or graphic format, whether provided on digital format, data carriers or in hardcopy or in any other manner, with details provided on the functional, operational and technical specifications or on the requirements for any Product, Services and/or Software, which is provided by ELR. Specifications also explicitly include the requirements for any Site, or environment to which Products, Service and/or Software will be delivered and/or training material provided or Specifications, upgrades and/or support and maintenance instructions and the Specifications also include any Special Conditions, that have been agreed between ELR and the Client.
- k. "Working Day" means any day from Monday to Friday from 9.00 o'clock CET to 18.00 o'clock CET, excluding any public holidays.

## 2. CONTRACT

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- 2.1 The Client may accept any Proposal offer from ELR by submitting an Order with a reference to the underlying Proposal. ELR shall check any Order from the Client with the Proposal provided by ELR and GT&C, and ELR shall issue an Order Confirmation, if all the details agree. Should ELR issue an Order Confirmation, then this shall create a binding Contract for the supply of any Products, Services and Software, if the Client meets the all relevant conditions.
- 2.2 Any Special Conditions shall take precedence over the GT&C. However, unless any Special Conditions are confirmed in writing by ELR, the GT&C apply to any Order Confirmation.
- 2.3 Any terms and conditions, which vary from the GT&C and which are contained in the Order from the Client, shall be invalid, unless ELR explicitly agrees to these in writing.
- 2.4 In case of doubt, the order of precedence of the documents making up the Contract shall be as follows, with the most important being listed first:
  - a. Any Special Conditions agreed in writing by ELR
  - b. The GT&C of ELR
  - c. The remainder of the Order Confirmation by ELR
  - d. The Order from the Client
  - e. Any email correspondence that clearly indicates a mutual agreement between ELR and the Client

- 2.5 Should a Client not wish to proceed with an Order that the Client has provided to ELR, the Client may cancel the corresponding Contract without liability provided the Client notifies ELR in writing of this cancellation.
- 2.6 Subject to Article 2.5, any order can only be cancelled by the Client, no later than five (5) working days, or seven (7) calendar days from the receipt of the corresponding Order Confirmation from ELR.
- 2.7 After a period of five (5) working days following an Order Confirmation, any Contract can only be terminated under the provisions of Article 12 Duration & Termination of the GT&C.

### **3. SUPPLY OF SURVEILLANCE PRODUCTS, SERVICES AND SOFTWARE**

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- 3.1 ELR will provide Products, Services and Software subject to the terms set out in the Order Confirmation, the GT&C and any Special Conditions that ELR has confirmed to the Client in writing. In addition, the delivery of said Products, Services and Software is subject to any relevant Specifications that have been provided by ELR.
- 3.2 ELR may deliver the Products, Services and Software itself or through its subcontractors and/or distributors and/or under license from any third party manufacturers or producers.
- 3.3 ELR shall always remain fully responsible for any acts and omissions of its subcontractors and/or suppliers in the provisions of Products, Services and Software.
- 3.4 The Client may authorize a third party to act of their behalf, provided ELR has agreed to this in advance and in writing. ELR will not be able to withhold consent without cause and any consent would require the Client to be fully liable for the acts and omissions of its Authorized Third Party, as though the Client had itself made such acts and/or omissions.

### **4. SURVEILLANCE PRODUCTS**

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- 4.1 ELR shall deliver the Products in accordance with the Contract, GT&C and any Special Conditions and Specifications that were agreed in writing between ELR and the Client and to the Site of the Client that was specified in the Order Confirmation from ELR.
- 4.2 All the relevant risks for the Products provided by ELR shall pass to the Client upon the Client taking delivery of said Products at the Site of the Client.
- 4.3 The legal title to any the Products provided by ELR will remain with ELR, until such time that ELR has received payment for the full amount for those Products in the specified bank account of ELR.
- 4.4 Until the legal title to the Products passes to the Client, the Client shall be required to take extreme care of the Products and arrange for all the appropriate insurances required, such as the Client's expense. In absence of such insurance, the Client will have full liability for said Products towards ELR, until such time that the full legal title has passed to the Client.
- 4.5 In certain cases, ELR may request, and the Client will be obligated to provide, details of the relevant insurance policies that the Client has in place to insure all the relevant risks for the Products provided by ELR.
- 4.6 ELR explicitly reserves the right to repossess the Products, in case the Client is unable to fulfil its obligations under the Contract with ELR, and in case of non-payment, bankruptcy, fraud, material breach or any other event mentioned under Article 12 in its entirety. This right and license shall continue after, and despite the termination for any reason of the Contract.
- 4.7 The Client shall ensure that any Site to which the Products are to be provided by ELR, will meet the Specifications confirmed in writing by ELR.

- 4.8 Any Intellectual Property Rights pertaining to the Products provided by ELR to the Client, will remain the exclusive property of ELR or its suppliers. The Client explicitly agrees that the Client cannot copy, reverse engineer and/or order the production by any third parties of any copies or derivatives of the Products provided by ELR.

## 5. SERVICES

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- 5.1 ELR shall deliver or perform the Services in accordance with the Contract, GT&C and any Special Conditions and Specifications that were agreed in writing between ELR and the Client and to the Site of the Client that was specified in the Order Confirmation from ELR.
- 5.2 Any Services provided by ELR will be provided in accordance with any Specific Provisions that have been agreed for those services in writing between ELR and the Client.
- 5.3 If the Services provided by ELR include any training, then Client shall, under normal circumstances, be responsible for the provision of an appropriate venue or Site, refreshments and reasonable facilities for such training. The Client should be aware that training sessions may be limited to a maximum of delegates.
- 5.4 ELR will provide any Services with a minimum notice period of a least ten (10) working days. Any date on which the Services will be provided will be agreed in advance between ELR and the Client. Once a period of ten (10) working days prior to the Services being delivered, has started, no changes can be made to the period on which the Services can be delivered.
- 5.5 In the event that ELR is unable to deliver the Services on the scheduled date due to failure of the Client to meet its obligations hereunder, the Client will need to purchase these Services again under a new Contract, as ELR cannot be required to make the same resources available later again without additional compensation.
- 5.6 ELR explicitly reserves the right to cancel the provision of any Services agreed, in case the Client is unable to fulfil its obligations under the Contract with ELR and in case of non-payment, bankruptcy, fraud, material breach or any other event mentioned under Article 11 in its entirety. This right and license shall continue after, and despite the termination for any reason of the Contract.
- 5.7 The Client will not sell, assign, license, lease, rent, loan, lend, provide or otherwise distribute, transfer or make available the Products provided by ELR in any manner to third parties, until such time that payment for the relevant invoice has been received in full by ELR.

## 6. SOFTWARE LICENSE

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- 6.1 Subject to any Special Conditions for an Agreement, ELR may grant the Client and/or the User a Software License for the use of the Software provided by ELR and this License will be provided to a specific nominated entity, on a non-transferable and non-exclusive basis for the use of the Software, whether for a specific period, or not, and in respect of the specific purposes for which the Software was provided, is intended to be used, and may only be used.
- 6.2 The Client and/or the User are not allowed not make any copies of the Software provided by ELR under any circumstances.
- 6.3 The Client and/or the User will not copy or install the Software provided by ELR on any other data carriers.
- 6.4 The Client and/or the User will not reverse engineer, decompile, or disassemble the Software provided by ELR or re-design the concept of the Software for its own purposes.

- 6.5 The Client and/or the User will not sell, assign, license, lease, rent, loan, lend, transmit, network, or otherwise distribute, transfer or make available the Licensed Software provided by ELR in any manner to third parties.
- 6.6 The Client and/or the User will use the Licensed Software only for its own internal purposes, and will not use the Licensed Software to market or commercially exploit the Software itself or provide copies of the Software provided by ELR to any third parties, in any manner whatsoever.
- 6.7 The Client and/or the User shall ensure that the Software is managed in a proper manner and that all persons with administrative authority over the Software shall be competent trained employees and that these persons shall be under their supervision and properly informed of the relevant terms and conditions in the Agreement or any Special Conditions that have been mutually agreed.
- 6.8 The Client and/or the User are expressly prohibited from adapting, modifying, merging, revising, improving, translating, upgrading, enhancing and creating derivative copies of any part of the Software provided by ELR, and the latter applies to error correction or any other type of maintenance.
- 6.9 The Client and/or the User will maintain true, up-to-date records to enable ELR to check the compliance of the Client and/or the User for the use of the Software with the Agreement, Special Conditions or any Specifications.
- 6.10 For the duration of the Agreement and for a period of three (3) months afterwards, The Client and/or the Buyer will permit ELR to have The Client's and/or the User's relevant records and computer systems that may reasonably be required in relation to Article 6 and Article 15 of this Agreement.
- 6.11 The Client and/or the User will take all the appropriate security measures sufficient to properly safeguard the Licensed Software from theft or from The Client by persons other than The Client and/or the Buyer or the Buyer's authorized employees and any third parties, authorized by ELR.
- 6.12 The Client and/or the User will not move the Software from the Site or operate it on any other hardware or data carriers, other than has been previously approved by ELR.
- 6.13 The Client and/or the User will ensure proper version control and ensure that the latest version of the Software will be used, as and when these versions become available.
- 6.14 The Client and/or the User will ensure that the Software, any Specifications and other material relating to the Software will be maintained in accordance with the Agreement and/or any mutually agreed Special Conditions.
- 6.15 The Client and/or the User will keep the Licensed Software free and clear of all claims, charges, mortgages, liens and encumbrances.
- 6.16 ELR explicitly reserves the right to repossess and/or disable the Software, in case The Client and/or the Buyer are unable to fulfil its obligations under the Agreement with ELR and in case of non-payment, bankruptcy, fraud, material breach or any other event mentioned under these terms & conditions in its entirety. This right and license shall continue after and despite the termination for any reason of the Agreement.
- 6.17 The Client and/or the User are liable for consequent damages and loss of revenue if it is found to be materially in breach of Article 6 of this Agreement.

## 7. PERSONNEL

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- 7.1 In the event that ELR visits the Client's premises, the Client shall advise ELR's staff, agents or subcontractors of all the relevant rules, regulations and practices, with which they should comply, whilst being at those premises.

- 7.2 ELR's staff, agents and subcontractors shall comply with all the relevant rules and regulations, whenever they are at the Client's premises. The Client shall take reasonable precautions to ensure the health and safety of ELR's staff, agents and sub-contractors while they are on the Client's premises.
- 7.3 The Client shall have in place third party liability insurance to cover any risks to which the people working on behalf of ELR will be exposed.
- 7.4 If the Client (hereinafter referred to as the "Hiring Party") induces people working on behalf of ELR that are engaged in the delivery of the Products, Services or Software to enter into an agreement with the Client, at any time during the term of the Contract, or during a period of twelve (12) months thereafter, then the Hiring Party shall pay ELR an amount being equivalent to fifty percent (50%) of the employee's gross annual salary, whereby the Client agrees that such sum is a genuine estimate of the actual cost of the disruption and/or the cost of replacement, that such hire would cause to the efficient conduct of ELR's business.

## 8. PAYMENT

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- 8.1 ELR will send invoices to the Client in accordance with the Contract, GT&C and any Special Conditions that have been agreed between ELR and the Client in writing.
- 8.2 The normal payment terms of ELR are fifty percent (50%) of the invoice amount upon the order by the Client being accepted by ELR, which ELR will do by means of an Order Confirmation, and fifty percent (50%) upon delivery of any Products, Services and Software.
- 8.3 The Client shall pay all reasonable travel, accommodation and subsistence expenses incurred by ELR, which are necessary for the delivery of the Products, Services and Software.
- 8.4 In case of non-payment, the Client shall pay relevant interest on any outstanding amounts due to be paid by the Client.
- 8.5 The interest payable by the Client on any overdue amounts for invoices sent by ELR will be at the rate of seven percent (7%) percent per annum, above the marginal lending facility rate of the European Central Bank, which interest will be accruing daily from the date, upon which such amounts became payable until the actual date of the payment has been received.
- 8.6 The Client is obligated to notify ELR in writing within three (3) days after the date of receipt of an invoice of any warranty issues, claims and/or disputes.
- 8.7 The Client agrees to pay the invoices from ELR by bank transfer within seven (7) days of the date of the invoices, unless otherwise specified in the Order Confirmation or in the Special Conditions.
- 8.8 The Client shall be liable for any other agreed upon fees, taxes and duties, and in addition for any national, European Union, value added, sales, excise, state, local or other taxes or customs duties applicable.
- 8.9 For the avoidance of doubt, should the Client be required by any law or regulation to make any deductions on account of any tax authorities or any other government bodies, including, but not limited to, Withholding Tax, or otherwise, on any sum payable under the Contract, the sum payable shall be increased by the amount of such deduction, to ensure that ELR receives a sum equal to the amount which is to be paid under the Contract.
- 8.10 ELR shall notify the Client of any increases in the prices in advance of the execution of any new order for the purchase of additional Products, Services and Software.



- 8.11 If the payment of an invoice from ELR, or any part thereof is overdue, then ELR may entirely at ELR's option, suspend provision of the Products, Services and Software until the overdue amounts are paid in full; or treat such as material breach and terminate the Contract in accordance with Article 11.2.a.

## 9. WARRANTY

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- 9.1 ELR hereby confirms that the Products, Services and Software will have a warranty for a period of one (1) calendar year from the date of transport.
- 9.2 ELR does not warrant that the operation of the Software will be uninterrupted or error free at all times and under all atmospheric conditions.
- 9.3 ELR hereby warrants that the Services supplied under the GT&C will be carried out with due diligence, a duty of care and reasonable skill and attention by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated. ELR warrants that any Services provided will be fit-for-purpose and conform to the good working practices and relevant standards within the Surveillance industry.
- 9.4 ELR hereby warrants that all Surveillance Products, for a period of one (1) calendar year from delivery the Surveillance Products to the Client's and/or the Buyer's Site, will be free of material defects and in good working order.
- 9.5 In the event that the relevant underlying manufacturer or supplier of the Surveillance Products offers a longer warranty period than one (1) calendar year, then ELR shall extend this warranty offering to the Client accordingly, under the same terms and conditions from the original supplier.
- 9.6 Save as expressly provided in Article 8 of the GT&C, ELR specifically excludes, but without limitation all other conditions, warranties, representations or other terms relating to any agreement, or any other document. This includes any warranties that might otherwise be implied or incorporated into the GT&C. This may include such things as quality requirements, fitness for a particular or any purpose, or the ability to achieve any particular result.
- 9.7 The Client and/or the Buyer agree that their sole remedy in respect of any non-conformance with the warranties in Article 9 is that ELR shall at ELR's expense remedy such non-conformance, and if in ELR's reasonable opinion ELR is unable to remedy such non-conformance, then ELR shall refund the corresponding amounts as listed on the invoice sent by ELR, if such invoice has been paid.
- 9.8 The Client and/or the Buyer hereby agree that ELR's sole remedy in respect of any non-conformance with the warranty under Article 9 is that the Client shall return any defective Products to ELR and that ELR shall arrange for the repair and/or replacement of any defective Product under the normal delivery timetables, should no provision have been made to have any relevant spare parts available on site.
- 9.9 If ELR procures the replacement of a Surveillance Product, the replacement Surveillance Product may be new or used, or re-conditioned, but it shall in any event be covered by the warranty in Article 9 for the remainder of the warranty period, as was applicable to the original Surveillance Product, or for ninety (90) days, whichever is the longer.
- 9.10 Once seven (7) calendar days have passed from the receipt and/or installation, which ever may be later, of the Surveillance Products, unless otherwise agreed in writing, and ELR has NOT received any written notification of any possible defects, faults or discrepancies, the Surveillance Products will be considered to have been accepted by the Client and/or the Buyer. The warranty period will formally start and be in force from the original date of the delivery.

- 9.11 The warranties provided under in Article 9 are subject to ELR's limit of liability as set out in Article 10 and shall not apply when a warranty claim arises from any of the following:
- a. When Surveillance Products delivered by ELR is being used outside their normal operational parameters as set out in the Specifications.
  - b. When Surveillance Products delivered by ELR is being used other than in accordance with the Specifications provided by ELR.
  - c. When Surveillance Products delivered by ELR is being modified other than by ELR or other than under ELR's explicit written instructions.
  - d. When Surveillance Products delivered by ELR is subject to accidental damage or intentional damage during shipping and/or operation.
  - e. When the Client and/or the Buyer are not taking the appropriate precautions and/or taking reasonable care and attention or the appropriate steps to take proper delivery and/or making sufficient resources available, or to make available an appropriate environment, in terms of safety, size and other relevant criteria, to ensure the safe receipt of Surveillance Products provided by ELR.
  - f. When Surveillance Products delivered by ELR are integrated with third party software and/or hardware and/or products, which is other than the Hardware and the Surveillance Products provided by ELR.
- 9.12 In the event of any damaged or faulty Surveillance Products that are no longer covered by their warranty, the Client and/or the Buyer may request service, inspection, repairs or replacement Surveillance Products from ELR. ELR shall use reasonable care and make appropriate endeavors to offer the Client and/or the Buyer such service, inspection, repairs or replacement at the prevailing commercial rates, provided the means of repairs or replacement Surveillance Products are actually available to ELR.

## 10. LIMITATION OF LIABILITY

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- 10.1 Nothing in the Agreement and/or any Proposal, or in any Special Conditions shall exclude or limit ELR's liability for any of the following:
- a. Fraud, theft and/or other criminal act
  - b. Personal injury or death caused by the negligence of ELR's employees in connection with the performance of their duties hereunder
  - c. Any other liabilities that cannot be excluded by law.
- 10.2 Subject to Article 10.1, in no event will ELR be liable under the Agreement for any damages resulting from any of the following:
- a. loss of, or damage to, or the corruption of data
  - b. loss of use Surveillance Products, Services and Software
  - c. loss of profits due to the loss of use Surveillance Products, Services and Software
  - d. loss of anticipated savings due to the loss of use Surveillance Products, Services and Software
  - e. any indirect or consequential damages or losses due to the loss of use Surveillance Products, Services and Software
- 10.3 Any liability on the part of ELR is excluded, when such damages were reasonably foreseeable, or actually foreseen by the Client and/or the Buyer, or could have reasonably been prevented under normal circumstances by the Client and/or the Buyer.



- 10.4 For the avoidance of doubt, in the event of loss of, damage to or corruption of the Software arising from any act or omission by ELR under the Agreement, then ELR will only be liable for the cost of restoring such Software. ELR will not be responsible for restoring data where backups were available, or where backup were not available. ELR will under no circumstances be liable for the value of any lost or corrupted data that could not be recovered.
- 10.5 Subject to Article 10.1, ELR's maximum liability to the Client and the Buyer for any cause whatsoever, shall be limited to the direct costs and damages only and will be limited at any event. This will be relating to the relevant amount listed for that item in the invoice from ELR.
- 10.6 ELR hereby excludes all liability that ELR has not expressly accepted in the Agreement. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action.
- 10.7 For the purposes of this Article 10 "ELR" includes ELR's employees, sub-contractors, licensors and suppliers who shall therefore have the benefit of the limits and exclusions of liability set out in this Article 10, under the Rights of Third Parties Act 1999.
- 10.8 No action, regardless of its form, arising out, or being expected under the Agreement, may be brought by the Client and the Buyer, for more than three (3) months after the cause of the action has occurred.
- 10.9 Save as provided in Article 10, the Client and/or the Buyer shall have no remedy in respect of any representation (whether written or oral) made, which the Client and the Buyer relied upon information provided in good faith when entering into the Agreement ("Misrepresentation) and ELR shall have no liability to the Client and/or the Buyer other than pursuant to the express terms of the Agreement and/or in any Proposal.
- 10.10 Nothing in the Agreement and/or in any Special Condition shall exclude, or limit ELR's liability for any misrepresentation that ELR has made in a fraudulent manner.
- 10.11 In entering into an agreement the Client and/or the Buyer, acknowledges that it does not rely on, and explicitly waives any rights to any claims for breach of, any such representations, which are not so confirmed in writing by ELR.

## 11. DURATION & TERMINATION

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- 11.1 Each Contract shall become effective on its Effective Date and shall continue unless and until terminated in accordance with the provisions of Article 2.6 or Article 11.2.
- 11.2 Either party ("the Initiating Party") may forthwith terminate a Contract at any time:
- a. on giving written notice to the other party if the other party commits any material breach of any relevant term of the Contract, and if that breach can reasonably be remedied but the other party in breach fails to provide a solution to the reasonable satisfaction of the Initiating Party within thirty (30) days of a written request to remedy the same, or in case of a replacement, within the standard delivery period as could reasonably be expected for that Product, Services and Software provided by ELR.
  - b. if the other party has an administrator, receiver or administrative receiver appointed, in any such instance, or, over its undertaking or any part thereof, or has passed an extraordinary resolution for a creditors' voluntary winding up, or has been put into compulsory liquidation by a court having an insolvency jurisdiction, in respect of which the winding up order has been made, or has entered into a corporate voluntary arrangement due to insolvency, or has ceased, or threatened to cease to carry on its business, or if any substantially similar event shall take place under the laws of another jurisdiction.

- 11.3 The expiry of the Contract or the termination of the Contract for whatever cause shall be without prejudice to any other rights or remedies a party may be entitled to under law and shall not affect the respective rights and liabilities of either ELR and/or the Client accrued prior to such termination.
- 11.4 The following Articles shall continue to be in effect after the termination or expiration of the Contract: Article 1, Article 2.3, Article 2.4, and Article 6 in its entirety, Article 8.4, Article 8.5, Article 9, 10.4, 10.5, 10.6, 10.7, 10.8, 10.9, 11, 12.3, 13, 14, 17 - 21 inclusive.

## 12. INTELLECTUAL PROPERTY

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- 12.1 The Client acknowledges that the Products, Services and Software, and their respective designs and specifications are the exclusive intellectual property of ELR, or its suppliers, and that the Client shall not acquire any Intellectual Property rights for any of the Products, Services and Software provided by ELR, or any other deliverables created under any Contract between ELR and the Client, including but not limited to any enhancements that the Client may have specifically requested ELR to provide, save to the extent explicitly set out herein.
- 12.2 ELR is the owner, or licensed by the holder of the patent, copyright, trade secrets, trademarks and any other intellectual property rights of the Products, Services and Software provided to the Client. Title to the Intellectual Property rights for these Products, Services and Software shall remain with ELR and/or the actual holder of the patent, copyright, trade secrets, trademarks and any other intellectual property rights at all times, regardless of any payment made by the Client in respect of any invoices from ELR.
- 12.3 For the avoidance of doubt title and all intellectual property rights to any design, new software, new protocol, new interface, enhancement, update, derivative works, revised screen text or any other items that ELR creates for the Client shall remain with ELR or the holder of the patent, copyright, trade secrets, trademarks and any other intellectual property rights.
- 12.4 Any rights referred to under Article 12 can only be transfer to the Client, after a specific agreement has been reached in this respect and on the basis of a formal transfer deed, the signing of which will need to witnessed by a public notary, and after the agreed consideration for such transfer has been paid to the relevant holder of such rights.
- 12.5 Subject to the provisions of this Article 13, ELR shall defend at ELR's own expense any claims brought against the Client alleging that the use of the Products, Services or Software provided by ELR accordance with the Contract, infringes a patent, copyright, or mask work belonging to any third party (hereinafter referred to as an "Intellectual Property Claim") and ELR shall pay all damages awarded, or agreed to be paid to any third party in settlement of an Intellectual Property Claim provided that the Client will do any of the following:
- a. promptly furnishes ELR with written notice of the Intellectual Property Claim upon becoming aware of the same;
  - b. makes no admissions or settlements without ELR's prior written consent;
  - c. acts in accordance with ELR's reasonable instructions and provides ELR with reasonable assistance in respect of the Intellectual Property Claim;
  - d. gives to ELR the sole authority to defend or settle the Intellectual Property Claim.
- 12.6 In case of an Intellectual Property Claim, ELR shall either:
- a. obtain for the Client the right to continue using the relevant Software or Product;
  - b. replace or modify the relevant Software or Product so that it becomes non-infringing;

- c. if such remedies in a. and b. above would not be reasonably available, then the Client shall cease to use the relevant Software or Product and ELR shall refund to the Client the corresponding portion of the License Fees or Product Fees paid in respect thereof.
- 12.7 ELR shall reimburse the Client's reasonable costs incurred in complying with the provisions of Article 12.6.
- 12.8 ELR shall have no liability for any Intellectual Property Claim resulting from the integration of the Software or the Products with other goods or software that were neither supplied nor combined with the Software or the Products delivered by ELR, if the contravention results from any breach of the Client's obligations under the Contract with ELR, or with any other contract.
- 12.9 This Article 12 states ELR's entire obligation and liability and the Client's sole remedy in respect of any infringement or alleged infringement of any intellectual property rights arising from the use of the Products, Services and Software by the Client.
- 12.10 The Client is liable for consequent damages and loss of revenue if it is found to be in breach of Article 12 in its entirety.
- 12.11 ELR hereby excludes all other obligations and liabilities in relation to infringement or alleged infringement of the intellectual property rights of any person.

### 13. CONFIDENTIALITY

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- 13.1 Confidential Information shall be defined as any information (provided in whatever form, whether disclosed in oral, written, electronic form or by other means) belonging or relating to ELR's or the Client's business affairs or activities and which fall under any of the following:
  - a. that has been marked as confidential or proprietary
  - b. that has been identified orally or in writing as being of a confidential nature
  - c. that may reasonably be expected to be confidential in the circumstances
  - d. any agreements made on pricing and discounts between ELR and the Client
- 13.2 The Client undertakes that for a period of two (2) years from the date of disclosure, or termination of the Contract, whichever comes latest, it will not, without the prior written consent of ELR, use, disclose, copy or modify any Confidential Information of ELR (or permit others to do so) other than is necessary for the performance of its rights and obligations under the Contract.
- 13.3 The Client hereby agrees that it shall treat the Confidential Information from ELR with the same degree of care as it employs with regard to its own Confidential Information of a like nature and in any event in accordance with best current commercial security practices, disclosing such Confidential Information only to those of its employees, consultants and bona fide professional advisers, who need to have such information for the purposes of the Contract, and ensuring that such employees, consultants and professional advisers shall be bound by the same confidentiality obligations as are set out in this Article.
- 13.4 The provisions of Article 13.2 and Article 13.3 shall not apply to any of the following:
  - a. any information in the public domain or available through searches of the internet other than by breach of the Contract by ELR or the Client
  - b. any information that is lawfully in the possession of the receiving party thereof before disclosure by the disclosing party
  - c. any information that is lawfully obtained without restriction from a third party

- d. any information that is required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority, provided that the party under such duty to disclose shall use all reasonable endeavors to give the other party as much prior notice of such disclosure as is reasonably practicable and permitted by law.
- 13.5 The Client may only publicize its involvement with ELR after providing prior notification to ELR of the details of the intended communication and ELR giving written permission for this communication to the Client.
- 13.6 If the Contract is terminated, the Client shall, at ELR's option, return or destroy all Confidential Information from ELR.
- 13.7 The Client's employees or agents are not authorized to make any representations concerning the Products, Services and/or Software, unless confirmed in writing by ELR. In entering into the Contract the Client acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 13.8 The Client is liable for consequent damages and loss of revenue if it is found to be in breach of Article 13 in its entirety.

## 14. ASSIGNMENT

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- 14.1 The Client may not assign the Contract or otherwise transfer any rights or obligations under the Contract with ELR without prior written consent from ELR.
- 14.2 ELR may assign the Contract for the purposes of obtaining trade finance, factoring or debt collection through third parties.

## 15. FORCE MAJEURE

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- 15.1 ELR is responsible for failure to fulfil its obligations hereunder due to causes beyond its reasonable control that directly or indirectly delay or prevent the timely performance under the Contract, which is hereinafter referred to as 'Force Majeure'.
- 15.2 In this respect, and this is for merely indicative purposes, and will not limited to, and this is not meant to be restrictive, the following causes of delay are at least included under Force Majeure: any failure due to any third party suppliers, any transport and services strikes, any errors or delays in transport, goods being held up in customs, transport system failures, natural catastrophes, floods, storms, earth quakes, civil disturbances, uprisings, terrorist attacks, labor conflicts, sabotage, strikes, work stoppages, any intervention by any government body and/or its agency, walk-outs by the supplier's, any third party or his subcontractors' personnel, sabotage, accidental shut-downs at the manufacturer's works due to any cause of breakdown, etc. and any other cause that may be considered as an act of God under law, jurisprudence and/or legislation.
- 15.3 Neither party will be deemed in default of this Agreement to the extent that performance of its obligations, or attempts to cure any breach, are delayed or prevented by reason of any act of God, cause outside of the party's reasonable control or other force majeure; provided that, such party promptly gives to the other party written notice of the condition and undertakes commercially reasonable efforts to circumvent the cause of the delay or minimize the extent of the delay.
- 15.4 Dates or times by which each ELR is required to render performance under the Contract shall be postponed automatically to the extent that ELR is delayed or prevented from meeting them due to causes considered to reasonably fall under Force Majeure.

- 15.5 If the delivery, installation or reception of the Products, Services or Software Supply should be delayed for reasons not attributable to ELR, but lies with the Client, then the agreed contractual terms and payment periods will be maintained.
- 15.6 When there is a cause of force majeure, ELR will notify the Client at the earliest opportunity possible, explaining the nature or the cause of Force Majeure and the estimated duration involved. ELR will also notify the Client as soon as Force Majeure is terminated and specify the time required to meet the obligations that were suspended due to said Force Majeure. The occurrence of Force Majeure will give ELR the right to a reasonable extension of the date of delivery.
- 15.7 Should force majeure last for longer than three (3) months, the Parties will negotiate to reach a fair and adequate solution, given the relevant circumstances involved at that moment, taking into account the effect of Force Majeure on ELR's activities and operations. If no reasonable agreement is reached between ELR and the Client within a period thirty (30) days, ELR may cancel the order, with no responsibility on the part of ELR, by written notice to the Client.

## 16. NOTICES

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- 16.1 All notices made pursuant to the Contract must be made in writing. Any written notice to be given or made pursuant to the provisions of the Contract shall be sent postage prepaid by registered or recorded mail or by a reputable courier service.
- 16.2 Any notices given to ELR, shall be addressed to the address under INTRODUCTION above and marked for the attention of "The CEO".
- 16.3 Any notices given to the Client, shall be sent to the address given for the Client in the Order Confirmation and marked for the attention of the person that has signed the order or any such other person as the Client has specified to ELR in writing.
- 16.4 Unless otherwise provided in the Contract, all notices shall be deemed as given on the day of their receipt by the receiving party.
- 16.5 Any notices may also been given by email to the appropriate recipient, provided the other party has confirmed the receipt by means of an actual reply, which is not an automated reply generated by the system.

## 17. ENTIRE AGREEMENT

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- 17.1 The Contract, including the GT&C, any Special Conditions and Specifications and any annexes or schedules expressly incorporated by reference, constitute the entire agreement between ELR and the Client with respect to the subject matter hereof and shall supersede all previous representations, agreements and other communications between ELR and the Client, both oral and written.
- 17.2 The GT&C shall prevail notwithstanding any variance with the terms and conditions of any order or purchase order submitted by the Client, if these terms and conditions deviate from the GT&C and have not been explicitly listed in the Order Confirmation from ELR.

## 18. DISPUTES & APPLICABLE LAW

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- 18.1 Any disputes in respect of quality issues and/or warranty and/or claims need to be reported to ELR at the earliest opportunity, and at any rate, no later than three (3) days upon quality issues, or items not being in a good working order, becoming apparent to the Client.

- 18.2 In the event of any disputes arising under the Contract, and ELR and the Client cannot agree amongst themselves, then ELR and the Client will resolve this dispute by means of arbitration in accordance with the relevant rules for arbitration in that jurisdiction.
- 18.3 ELR and the Client agree that any disputes are to be settled by means of arbitration in order to keep minimize the costs for both parties and to ensure a quick dispute resolution under timelines that are much more efficient than under litigation by means of obtaining rulings through the courts of law.
- 18.4 A suitable party and/or parties will be appointed jointly as arbitrators by ELR and the Client within a period of two (2) weeks of ELR and the Client not being able to reach a resolution on the dispute between themselves.
- 18.5 The arbitrators will either operate independently as one (1) individual arbitrator hearing the case or will be operating in a group of three (3) arbitrators that will be hearing the case jointly. ELR and the Client will jointly have to agree on the number of arbitrators and should no agreement be made within a period of two weeks upon the dispute becoming apparent, the number of arbitrators will be three (3), in the last instance this will increase the cost of dispute resolution significantly.
- 18.6 Any arbitrator to be appointed shall have the proper legal background, meaning they will either be a register lawyer or judge, and shall in no way have any business relations and/or personal relations with either ELR and/or the Client, either now and/or in the past.
- 18.7 After being appointed The arbitrator(s) will determine the appropriate procedures and timelines to be followed, in respect of any disputes between ELR and the Client.
- 18.8 Any ruling provided by the arbitrators shall be considered an award in formal terms and will be considered binding and enforceable in a court of law, should either ELR and/or the Client not abide by the terms of the award.
- 18.9 Part of the ruling (award) that will be provided under the arbitration procedure listed above, will be an award in respect of costs. Under this Contract, the party that loses the legal argument will normally pay for all of the costs involved in the arbitration procedure, unless the arbitrators determine that shared costs is more appropriate under the circumstances.
- 18.10 No party may commence court proceedings in respect of any dispute arising out of the Contract, until both ELR and the Client have attempted to settle the dispute by mediation and the mediation process has been followed in its entirety.
- 18.11 Subject to the provisions of Article 18.1 and Article 18.5, both ELR and the Client hereby irrevocably agree that the courts of Amsterdam in the Netherlands shall have exclusive jurisdiction to settle any disputes of whatever nature arising out relating to the Contract.
- 18.12 Notwithstanding the provisions of Article 18.1, nothing in the Contract shall limit either ELR and/or the Client's right to seek injunctive relief.
- 18.13 The Contract shall be governed by and will be interpreted in accordance to English law.
- 18.14 If any provision of the Contract , or part thereof, is to become or considered invalid, void or unenforceable, by a court of competent jurisdiction, then ELR and the Client agree that any of the remaining provisions of the Contract shall not be affected by this, and that the remainder of the Contract shall remain valid and in full force and effect. Failure by ELR to enforce any provision of the GT&C will not be deemed a waiver of future enforcement of that or any other provision of the GT&C.
- 18.15 No waiver by ELR of any Article or part or term hereof shall constitute a waiver of any such term in any other case whether prior or subsequent thereto.
- 18.16 No single or partial exercise of any power or right by either party shall preclude any other or further exercise thereof or the exercise of any such power or right under the Contract.



- 18.17 The Contract may not be changed, modified, amended, released or discharged except by a subsequent written agreement or amendment executed by duly authorized representatives of ELR and the Client.
- 18.18 A person who is not a party to the Contract has no rights under the Rights of Third Parties Act 1999 to enforce any term of the Contract, except as explicitly provided by Article 11.4 or Articles 14.2, however this does not affect any right or remedy of a third party that exists or is available apart from the Act.