

**GENERAL CONDITIONS FOR SALES AND SERVICES TO BE PERFORMED BY ELYSIA S.A. AND COMPANIES**  
**DIRECTLY RELATED TO ELYSIA S.A.**  
February 2015 EDITION

**1. DEFINITIONS - PREAMBLE**

For the purposes of these General Conditions:

- a) 'Services' means any sales of Products or supply of services and/or work and/or deliverables by ELYSIA under the Contract;
- b) 'Products' means any hardware, software, components or spare parts which are subject purpose of the Services;
- c) 'Customer' means the person or Party whose order for the Services is accepted by ELYSIA;
- d) 'Party' or 'Parties' means ELYSIA and/or the Customer, either individually or collectively;
- e) 'Contract' means any agreement, quotation for Services or purchase order for the supply of the Services that has been accepted by ELYSIA, together with these General Conditions and any other document(s) expressly incorporated as part of the Contract;
- f) 'ELYSIA Proposal' or 'Quotation' means a document issued by ELYSIA describing the Services to be delivered and the corresponding price and fees and the schedule.

These General Conditions govern any Contract and, except where otherwise expressly agreed in writing, shall take precedence over all other terms and conditions, statements of work, technical specifications and other documents referenced in the Contract. Any terms and conditions appearing in the Customer's documents shall have no contractual effect and appear only by reason of being printed on the Customer's stationery. Any statements or undertakings made or given at any meetings or in any correspondence shall not amend any of these Conditions unless made in writing, signed by both Parties and expressly stated to be an amendment to these Conditions. Any amendment to the Contract must be in writing and accepted by an authorised representative of ELYSIA.

**2. PROJECT SCOPE – QUOTATION FOR SERVICES**

ELYSIA' scope of Services is determined by the description of tasks, Products, work and deliverables comprised in the Contract, inclusive of all variations which are agreed upon afterwards.

Prior to entering into the Contract, a quotation for Services may be drawn up by ELYSIA. The purpose of said quotation for Services is to specify and quantify the key aspects of the project scope of Services. Under no circumstances shall said quotation be deemed to be an undertaking by either Party. The Contract relating to performance of the Services shall take effect when the quotation issued by ELYSIA is agreed upon by both ELYSIA and the Customer.

**3. PRICES AND FEES**

3.1. All prices and fees mentioned by ELYSIA in any quotation for Services are exclusive of any VAT or other possible taxes, and will correspond only to the Services described in said quotation for Services.

3.2. The term of validity of any ELYSIA Proposal or Quotation for Services shall be three (3) months as from the date on which it is issued.

3.3. For Services that last longer than twelve (12) months after 'ELYSIA Proposal' has been issued, the price of the Services that were not yet been performed may be adjusted by ELYSIA annually in accordance with changes in ELYSIA's current prices.

3.4. If a 'fixed price' is mentioned in 'ELYSIA Proposal', then such price shall be considered as the agreed price. If no 'fixed price' is mentioned in 'ELYSIA Proposal', then the price payable shall be determined by ELYSIA by way of calculation afterwards based on the rates as agreed upon. If no rates have been agreed upon, then the rates shall be determined by ELYSIA on the basis of ELYSIA's usual methods and current rates at the date of providing the Services. If a 'controlled price' is mentioned in 'ELYSIA Proposal', then the quoted amounts indicates only an estimate of the costs which is not binding. Moreover, ELYSIA is entitled, whenever there is a period of twelve months or longer between the date on which the Services are/shall be completed, to index that part of the amount of the Services which has not been invoiced, according to the yearly adjustment of ELYSIA's rates.

3.5. In the event that any change to the scope of Services occurs, or that any delay arises, from instructions of the Customer or from modifications / changes requested by the Customer or from failure by the Customer to provide ELYSIA with adequate information or instructions or if any Customer information turns to be incorrect or incomplete, then ELYSIA shall be entitled to change the scope of the Services, the project schedule and the prices / fees of the Contract accordingly. In such case, any extra or supplementary or complementary Services and any cost or expense resulting therefrom will be billed by ELYSIA and paid by the Customer.

3.6. Unless otherwise expressly stated in the Contract, the prices and fees do not include travel, lodging and business expenses which shall be reimbursed by the Customer.

**4. PAYMENT**

Payments shall be made by the Customer in EURO (€) and be made without discount to ELYSIA's address. ELYSIA will submit invoices to the Customer in accordance with the terms provided for in 'ELYSIA Proposal' or agreed in the Contract.

Except as otherwise agreed, Services will be invoiced monthly by ELYSIA.

Except as expressly otherwise set out in the Contract, payment shall be due within thirty (30) days from the date of the invoice by bank to bank transfer to ELYSIA's bank account as designated in the invoice.

In case of 'fixed price' provided for the Services, the method of payment shall be as follows, unless stated otherwise:

- a) A down payment of thirty per cent (30%) of the price shall be made by the Customer upon entering into the Contract and ELYSIA's invoice claiming this down payment. Payment of such sum shall be a precedent condition of coming into force of the Contract and shall be made to ensure it is credited to ELYSIA's account within fifteen (15) days of receipt of ELYSIA's invoice;
- b) Payment of the balance of the price or any instalment thereof shall be made monthly based on ELYSIA's monthly invoices, in each case to ensure that the sum is credited to ELYSIA's account within thirty (30) days of receipt of ELYSIA's invoice.

Apart from a case of exemption, any late payment of sums owed to ELYSIA are regarded as an omission by the Customer and shall result, by rights and without notice, in the payment of a late interest payment equal to 12% a year starting from the due date, plus a penalty for late payment equal to 10% of the amounts outstanding. Any late payment by the Customer shall entitle ELYSIA to suspend the performance of the Services immediately.

## **5. WARRANTY**

### 5.1. Warranty

- a) Hardware: ELYSIA warrants that the Products shall (i) conform to the specifications in effect at the delivery and (ii) be free from defects in material and workmanship.
- b) Software: ELYSIA warrants that software shall perform substantially in accordance with the specifications in effect at the date of delivery. Software is inherently susceptible to bugs and errors. ELYSIA makes no warranty with respect to software which is provided to the Customer on an "as-is" basis and does not warrant uninterrupted or error-free operation of the Products.
- c) Services: ELYSIA warrants that it shall supply the Services in a workmanlike manner.

### 5.2 Warranty Period

Hardware: 12 months commencing on the date of on-site installation to the Customer or 18 months after the date of delivery, whichever date first occurs.

Software: 3 months commencing on the date of delivery or, if applicable, the date of acceptance.

Spare Parts: 3 months commencing on the date of delivery.

In case of repair or replacement, the warranty period shall continue to run until its expiry or 3 months after the repair or replacement, whichever is longer.

### 5.3 Conditions precedent for Warranty to apply

The warranty shall apply only to the extent the Products, Services or any parts thereof have:

i/ been handled, transported, stored and installed (if and to the extent such activities have not been carried out by ELYSIA) in accordance with ELYSIA's instructions including but not limited to use of original packaging, covered and secured location, minimum temperature, maximum humidity, and installation by ELYSIA's certified personnel, or, in absence thereof, in a professional and workmanlike manner;

ii/ not been subject to any unauthorized access, alteration, modification or repair or attempts thereto (such as removal of warning labels, original seals or serial numbers) or any abuse or damage;

iii/ been at all times 'normally used' for the specified purpose and operated and maintained in strict accordance with the instructions set forth in the operating and maintenance manual or, in absence thereof, in a professional and workmanlike manner. For the purpose hereof, 'normally used' means a regular, ordinary and routine use as intended or as recommended by ELYSIA;

iv/ not been connected to or used in combination with other products or systems (hardware and/or software) not compatible with the Products

### 5.4 Exclusions from the Warranty

In no event shall ELYSIA be liable for any defects, failures, loss or damage caused by or resulting from (i) wear and tear, (ii) any external cause or event out of ELYSIA's control, (iii) use or operation of the Products or Services prior to acceptance, (iv) any act or negligence of the Customer or any third party.

The warranty shall not apply to consumables. Any third party product or any part thereof which ELYSIA merely resells with the Products or Services, is subject to the original manufacturer's warranty and no separate warranty is given in respect thereof by ELYSIA.

### 5.5 Claims for repair or replacement under Warranty

Any claim under the warranty must be notified to ELYSIA in writing within 8 days from the discovery of the defect or failure.

### 5.6 Remedies under the Warranty

Under the warranty, ELYSIA shall, at its sole option and cost, and without undue delay, with respect to:

a/ Hardware: (i) repair or correct the Product or part; or (ii) replace the Product or supply part(s) or component(s). A replacement part shall be at least functionally equivalent to the original part. The replaced Product, parts and/or components shall become the

property of ELYSIA and shall, at ELYSIA's request, be returned by the Customer to ELYSIA within 15 days. If the Customer fails to return, ELYSIA shall invoice the replaced Product, parts and/or components at list price.

b/ Software: amend the software or supply an alternative version of the software.

c/ Services: re-perform the defective Service.

5.7 The remedies specified in this Article 7 shall constitute Customer's sole and exclusive remedy and ELYSIA's sole and exclusive liability for ELYSIA's breach of the warranty hereunder.

5.8 THE PROVISION OF THIS CLAUSE SHALL BE THE FULL EXTENT OF ELYSIA'S LIABILITY FOR DEFECTS, INCLUDING LATENT DEFECTS, IN THE PRODUCTS AND SERVICES SOLD OR SOFTWARE DELIVERED HEREUNDER, SHALL BE TO THE EXCLUSION OF ANY CONSEQUENTIAL LOSS OR DAMAGE SUFFERED, AND SHALL BE IN LIEU OF ANY WARRANTY, CONDITION OR LIABILITY IMPLIED BY LAW, INCLUDING BUT NOT LIMITED TO THOSE OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OTHER THAN THOSE EXPRESSED ABOVE, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED.

## **6. SECURITY - INTELLECTUAL PROPERTY**

6.1. Customer shall not disclose any proprietary or confidential information of ELYSIA.

6.2. Any patents, trademarks, copyrights, and any other intellectual property rights or any proprietary or confidential information, whether existing prior to the date of ELYSIA's order or developed as of the date thereof, shall remain the property of ELYSIA or its licensors, as the case may be, and nothing herein shall be construed as conferring on the Customer by implication or otherwise, any right, title or interest in, or any license under any intellectual property right, confidential information or other trade secret. ELYSIA shall however not enforce its intellectual property rights against the Customer, its successors or assigns who are operating the Products or Services as authorized hereunder.

6.3. The software supplied by ELYSIA to the Customer shall remain the property of ELYSIA or the licensor at all times. The Customer shall at all times comply with terms and conditions of the (sub)license imposed by ELYSIA or the licensor. Subject to the payment by the Customer of all outstanding amounts, ELYSIA hereby grants to the Customer a non-exclusive (sub)license to use the software solely for the purpose of operating the Products delivered hereunder. ELYSIA hereby grants to the Customer the right to assign the software user license referred to above to the end-user to whom the Customer resells the Products.

## **7. DELIVERY**

7.1. Unless otherwise expressly agreed in the Contract, the delivery schedule for performing the Services shall be provided for indicative purpose and may not result in penalties or the Customer withholding payments, nor the termination of the Contract. In any event, ELYSIA may not be held liable for a delay owing to 'force majeure' or events outside ELYSIA's control.

7.2. Products shall be delivered in accordance with the agreed Incoterm 2010. Products shall be delivered in ELYSIA's package with ELYSIA's standard labelling and markings. If ELYSIA cannot ship the Products or supply the Services due to Buyer, all costs associated therewith (incl. storage) shall be charged to the Customer.

7.3. Customer's failure to give notice to ELYSIA of any claim within 8 days after the delivery of the Products or supply of the Services shall constitute an unqualified acceptance thereof. Customer shall file a claim for loss of or transport damage to the Products against the carrier immediately upon delivery and notify ELYSIA forthwith. Rejected Products must be kept at ELYSIA's disposal and can only be returned with ELYSIA's prior consent.

## **8. RETENTION OF TITLE**

8.1 The ownership of the goods shall remain with ELYSIA until payment in full for all the goods has been received by ELYSIA.

8.2 We shall retain full title of the goods that have been delivered until the Buyer has discharged all claims arising from the business relationship.

8.3 Title in the goods shall not pass to the Buyer but shall remain with ELYSIA until the contract price has been paid to ELYSIA in full by the Buyer. Until such time as title in the goods as passed to the Buyer:

- ELYSIA shall have the absolute authority to retake, sell or authorised representatives shall be entitled at any time and without notice to enter upon any premises in which the goods or any part thereof is installed, stored or kept, or is reasonable believed so to be.

ELYSIA shall be entitled to seek court injunction to prevent the Buyer from selling, transferring or otherwise disposing of the goods.

8.4 Notwithstanding the foregoing, risk in the goods shall pass on delivery of the same to the customer, and until such time as titled in the goods has passed to the Buyer, the Buyer shall insure such goods to its replacement value and the Buyer shall forthwith, upon request, provide ELYSIA with a certificate or other evidence of such insurance.

8.5 The Buyer shall have the right to dispose of the goods delivered by us in the ordinary course of business.

8.6 If the goods being delivered under retention of title shall be inseparably assembled or mixed with other goods being under property of any third party, then we shall acquire title in the newly assembled or mixed goods.

The proportion of title shall follow from the proportion of the invoice value of the goods delivered by us.

8.7 In the event of any third party action against the goods delivered by us under retention of title the Buyer shall inform such party of our property and shall inform us about such action.

8.8 If the Buyer shall be in breach of contract, in particular in payment default, he shall, upon on demand, immediately return us all goods delivered under retention of title.

## **9. FORCE MAJEURE**

9.1. Neither Party shall be liable for default or delay in the performance of any of its obligations (except for any payment obligation) due to Acts of God, fires, explosions, strikes, riots, civil or international wars, invasions, refusal by governments to grant import or export licenses or the cancellation thereof, inability to obtain raw materials, components or parts due to Force Majeure, or a contingency of a supplier of goods and services, or any other event beyond the reasonable control of either Party.

9.2. In case of Force Majeure, ELYSIA shall allocate the available Products and supply the Services amongst its Customer at its discretion.

## **10. LIMITATION OF LIABILITY**

ELYSIA's exclusive liability and Customer's exclusive remedy for any and all claims, whether arising out of contract, warranty, negligence, ELYSIA's failure to comply with laws and regulations, or otherwise, shall be limited to the price of the Product or Service in relation to which the claim is made or, at ELYSIA's option, the replacement thereof.

In no event shall ELYSIA be liable for any indirect, immaterial or consequential damages, including without limitation loss of profits, business, revenue, goodwill or anticipated savings.

## **11. TERM AND TERMINATION OF THE CONTRACT**

11.1 The Contract shall come into force as of the date of receipt of the 'down payment' by ELYSIA or, if not down payment is provided, as of the first day of performance of the Services and shall remain in effect until the end of the Services.

11.2 In the event that the Customer decides to terminate the Contract early, it shall inform ELYSIA of its decision by registered letter with acknowledgment of receipt. On receipt of said notification, ELYSIA undertakes to promptly stop the Services. If the Customer decides to postpone the Services and, subject to the Parties' consent, ELYSIA shall examine whether it is possible to recommence the Services within the Customer's desired timescale.

In accordance with the new dates agreed for commencing the Services, a rider shall be appended to the initial Contract. ELYSIA reserves the right to apply the new current price in accordance with the new date on which the Services commences.

In the event that the Contract is terminated or postponed or suspended, the Customer undertakes to pay:

- All Services performed until the date of termination or of postponement or of suspension
- Any expenses actually incurred on the date on which the Contract is terminated or suspended or postponed
- Any kind of investment that is required by the Contract and, in general, all costs relating to termination, suspension or postponement of the Contract

In any case, compensation shall be payable to ELYSIA corresponding to 25% of the order amount under deduction of any down payments or interim payments already made by the Customer. However, if the suspension or postponement of the Contract is attributable to a case of force majeure, no compensation shall be payable by the Customer.

11.3 Either Party may terminate the Contract for default by providing thirty (30) days prior written notice to the other Party. In the event of termination of the Contract by the Customer for ELYSIA's default, and if the default is not remedied within said thirty (30) days period, ELYSIA agrees to promptly provide Customer with all terms of work in progress associated with the Services upon payment by Customer of any amounts owed.

## **12. APPLICABLE LAW AND DISPUTE RESOLUTION**

Unless stated otherwise in the Contract, the law of the State where is located the ELYSIA's entity that executed the Contract shall apply exclusively to all agreements, orders, calls for tenders and proposals, with the exclusion of the UN Convention on Contracts for the International Sale of Goods, concluded in Vienna on 11 April 1980.

The courts of the district where is located the main registered office of the ELYSIA's entity that executed the Contract shall have the sole jurisdiction to deal with any dispute between such ELYSIA's entity and the Buyer, regarding the interpretation or fulfilment of the Contract or its consequences.