

GENERAL TERMS AND CONDITIONS OF SALE

1. Scope

1.1. These general terms and conditions of sale shall apply to all sales of products ("Products") and/or supplies of services ("Services") by EVS Broadcast Equipment SA or any of its affiliates ("EVS") to you ("Customer") provided that they do not conflict with any other contractual provision expressly agreed by EVS. These general terms and conditions supersede any other terms and conditions of Customer, even if these have not been specifically rejected by EVS.

2. Formation of the agreement

2.1. Unless otherwise agreed in writing, EVS' quotations shall expire 30 days from the date of their issuance. The agreement between EVS and Customer is binding on the parties upon acceptance by EVS of Customer's purchase order at EVS' sole discretion (the "Agreement").

3. Delivery

3.1. Unless otherwise agreed in writing, the delivery is made Ex-Works (Incoterms 2010) from Liege-Belgium for delivery of Products and from any other EVS offices in case of repair and/or replacement of Products. In particular, Customer shall bear all costs, risks and applicable insurance relating to the transport following delivery. In the event that EVS would accept at its sole discretion to arrange for the transport of the Products, Customer shall still bear all costs, risks and applicable insurance relating to such transport.

3.2. Delivery times are approximate and for information only.

3.3. EVS shall not be liable for delays in delivery caused by any case of "force majeure" occurring notably in EVS' plants or with EVS' subcontractors or suppliers or by an act or omission of Customer. In the event of any such delay, the date of delivery shall be deferred for a period equal to the time lost by reason of the delay.

3.4. Whenever Customer is required to return Products or parts to EVS, notably under articles 9, 10, 11 and 12, Customer shall return the said Products or parts (a) within 30 days of EVS' request/approval for such return or of the receipt of the replacement/upgraded Products or parts or of the end of the rental period, (b) to EVS' premises designated by EVS, (c) in a proper and safe packing material and not by sea freight (Customer bearing all expenses and damages arising out of the use of improper or unsafe packing material or transportation), (d) at its own risks and costs, and (e) joining the RMA document provided by EVS for such return, which shall be well visible on the shipping box. If Customer fails to return the said Products or parts in time, Customer will be invoiced for such Products or parts at list price.

4. Price

4.1. Unless otherwise agreed in writing, the prices for the Products and/or Services are in EURO.

4.2. Unless otherwise agreed in writing, the prices set for the sale of Products do not include any other supply or service, including but not limited to installation, integration, training, maintenance and supply of new versions or other systems or equipment. Unless otherwise agreed in writing, the prices set for the provision of certain Services do not include any other supply or service.

4.3. Unless otherwise agreed in writing, the prices do not include the payment of any additional expenses related to the sale of Products or the supply of Services that are not explicitly mentioned on EVS' quotations.

4.4. The prices do not include taxes, duties, excises and other charges levied in connection with the sale of the Products or the provision of the Services. Customer will be liable and will indemnify EVS for all such taxes, duties, excises and other charges. In particular, Customer is responsible for any import declaration, import duties and/or gross sales taxes linked to imports of goods and services.

5. Payment

5.1. Unless otherwise agreed in writing, payment shall be made in EURO and in full at time of delivery prior to the shipment of the Products or prior to the provision of the Services, without discount.

5.2. In the event of non-payment of any invoice by the due date, Customer agrees that EVS shall be entitled, without prior notice and without prejudice to any other remedy, (a) to require immediate payment of all unpaid invoices, (b) to suspend immediately the delivery of any Products and/or the provision of any Services and/or (c) to stop providing the software keys allowing the use of any unpaid Products. In addition, any invoice unpaid by the due date shall automatically, without prior notice and without prejudice to any other remedy, carry interests at the rate of 1.5 % per month.

5.3. Customer shall have no right to suspend payments in the event of complaints or claims under the warranty hereunder.

6. Insurance

6.1. If the Agreement involves deferred payments, Customer warrants that the delivered Products shall be insured against fire and extended coverage perils in an amount equal to the full value of the Products. Customer agrees to maintain such insurance until full payment has been made to EVS. Customer procures that EVS shall be designated as loss payee under the relevant insurance agreement.

6.2. Customer agrees to indemnify and hold EVS harmless against any and all losses, damages and costs resulting from any inaccuracy of Customer's warranty under this article.

7. Retention of title

7.1. All delivered Products shall remain EVS' ownership until receipt of full payment by EVS for such Products. In this context, EVS is entitled to provide the Customer with temporary software keys allowing the use of the Products until receipt of full payment. In addition, Customer shall not (a) allow any lien to be created over or otherwise encumber the delivered Products and (b) modify or transform the delivered Products before full payment for such Products. Customer must also identify the Products as being the ownership of EVS in a conspicuous manner in order to effectively preserve the retention of title to the Products in favour of EVS until their full and entire payment. EVS shall be entitled to require immediate payment of all delivered Products if Customer breaches the obligation under this article.

8. Acceptance

8.1. Unless otherwise agreed in writing, the Products or Services shall be deemed accepted by Customer 10 days at the latest after they have been received or provided at the place of destination, unless Customer gives EVS full and detailed notice of any alleged defect by registered letter before the expiry of said period. Such acceptance covers any lack of conformity of the Products or Services which Customer could ascertain at the time of reception of the Products or the provision of the Services or in the following 10 days when carrying out careful and systematic inspection and tests.

8.2. In the event that EVS has agreed that the Products or Services are subject to factory or on-site acceptance tests, EVS and Customer shall agree on the acceptance procedures by mutual agreement. In this context, Customer shall accept the Products or Services if the acceptance tests only reveal non-critical issues not preventing the operational use thereof subject to EVS remedying such issues within a reasonable time period. Any operational use of the Products or Services by Customer or any other user shall be deemed to constitute a final acceptance. Customer's failure to complete the tests within 60 days from the delivery shall constitute an unqualified acceptance and a waiver by the Customer of all claims with respect thereto.

9. Warranty

9.1. EVS Services Warranty. EVS warrants that it shall supply the Services in a workmanlike manner. Upon breach of EVS Services Warranty, the Customer's sole and exclusive remedy will be the provision of the Services once again provided that EVS has been given written notice of such breach within 7 days following its occurrence.

9.2. EVS Products Warranty. EVS warrants that the Products shall substantially conform to EVS' specifications in effect at the delivery and be free from any defects in material and workmanship. Upon breach of the EVS Products Warranty, the Customer's sole and exclusive remedy will be, at EVS' sole discretion and option, the repair or replacement of the defective Products with functionally equivalent Products (either new or refurbished to be functionally equivalent to new) subject to the following:

9.2.1. EVS Products Warranty is limited to defects occurring within 2 years from the date of delivery of the relevant Products, except for the EVS Products available at <https://evs.com/en/specific-warranty-terms>. 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;

9.2.2. EVS Products Warranty shall only be triggered provided that EVS is given written notice of such defects within 30 days following their occurrence through the appropriate communication means set forth on the EVS Product Support Portal (<https://myservices.evs.com/>). All incidents reported to EVS shall be subject to a case ID tracking system;

9.2.3. Subject to EVS' prior written approval, Customer shall return any Products or parts in which a defect covered under this article has appeared, for repair or replacement pursuant to article 3.4.

9.2.4. EVS shall bear all costs, risks and applicable insurance relating to the transport of repaired and/or replacement Product or parts thereof supplied by EVS for delivery within the European Union. The Customer shall bear all costs, risks and insurance relating to the transport of repaired and/or replacement Product or parts thereof supplied by EVS for delivery out of the European Union. In any event, Customer shall be responsible for any taxes, duties and custom clearance.

9.2.5. EVS shall repair or, at its option, replace any defective Product or any defective parts thereof within a reasonable time depending on the issue at stake. In case of replacement of any defective Product or any defective parts thereof, these become the property of EVS upon delivery to Customer of the relevant Products or parts free from defects.

9.2.6. Replacement Products or parts for any defective Products or any defective parts thereof under warranty are provided at no cost. Replacement Products or parts for any defective Products or any defective parts thereof out of warranty are provided at list price except for EVS electronic boards which are invoiced at a « Standard Exchange Price » on the condition that the defective Products or parts is returned in time.

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9.2.7. Upon receipt of the replacement Products or parts, Customer shall return the defective Products or parts pursuant to article 3.4.

9.2.8. If the nature of defect is such that it is appropriate in EVS' opinion (and with Customer's approval) to effect repair on site, EVS shall provide on-site assistance. Customer shall do its utmost to collaborate and allow the service engineers to have access to all relevant information related to the Customer's Site. The travel time and the travel and living expenses of the service engineer in this respect shall be payable by Customer in accordance with EVS' then applicable rates and procedures.

9.3. Conditions precedent for Warranty to apply. The Warranty shall apply only to the extent the Products, Services or any parts thereof have:

9.3.1. been handled, transported, stored and installed pursuant to EVS' instructions or, in absence thereof, in a professional and workmanlike manner;

9.3.2. not been subject to damages, defects, failures, or performance limitations caused in whole or in part by Customer's or any person (other than EVS) abuse, mishandling, misuse, computer viruses, negligence, improper storage, servicing or operation, or unauthorized attempts to access, modify, repair or alter the Equipment in any way;

9.3.3. been at all times used for a regular, ordinary and routine use as intended or as recommended pursuant to EVS' instructions or, in absence thereof, in a professional and workmanlike manner;

9.3.4. not been connected to or used in combination with other equipment, products or systems (hardware and/or software) not purchased from EVS, or not specified or approved by EVS as compatible with the Product.

9.4. Exclusions from the Warranty. In no event shall EVS be liable for any defects, failures, loss of or damage caused by or resulting from (a) wear and tear, (b) any external cause or event out of EVS' control such as power failures, surges, failures in third-party communication networks, fires, floods, snow, ice, lightning, excessive heat or cold, highly corrosive environments, accidents, actions of third parties, (c) use or operation of the Product or Service prior to acceptance, (d) any act or negligence of Customer or any third party.

The Warranty shall not apply to consumables (e.g. batteries, etc.).

Any third party product or any parts thereof (including, without being limited, the third party software such as the operating systems running on the Products) which EVS 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 EVS.

9.5. EVS' sole and exclusive liability. The warranty under this article sets forth the Customer's sole and exclusive remedy for claims based upon any lack of conformity or defect of EVS' Products. Such warranty shall be in lieu of (and nor in addition to) any other warranty, express or implied, including but not limited to any implied warranty of merchantability or fitness for a particular purpose. No other remedy, including but not limited for any damages, in particular for loss of data or software, slowdown or interruption of activity or equipment, lost profits, lost sales, injury to person, or any incidental or consequential loss, shall be available to the Customer. EVS shall be under no liability, whether in contract, tort or otherwise, in respect of any lack of conformity or defect of any of our Products other than the liability described and provided for under this article.

10. Trade-in/Upgrade

10.1. In case of trade-in or upgrade involving trade-in of Customer's products, Customer warrants either that it has full and exclusive ownership of such products free and clear of any third party rights of any kind or that it is authorized by the rightful owner of such products to proceed with such trade-in. Customer's warranty shall be valid until the delivery by the Customer to EVS of the existing products which then become immediately the property of EVS. Customer shall return its existing products replaced within the framework of the abovementioned trade-in/upgrade pursuant to article 3.4.

10.2. Customer agrees to indemnify and hold EVS harmless against any and all losses, damages and costs resulting from any inaccuracy of Customer's warranty under this article.

11. Loan/Rental

11.1. In the event that EVS ships Products to Customer as a loan or within the framework of a rental agreement, Customer shall return such Products pursuant to article 3.4.

11.2. In the event that EVS grants a loan of Products to Customer, Customer expressly acknowledges and agrees that it shall remain EVS' ownership and shall not be used for any activity or purpose other than one of the purposes agreed with EVS and in particular not be used for any commercial or production activity unless otherwise specified in writing.

12. Support obligations

12.1. Except for the Warranty as set forth under article 9 of these terms and conditions, and unless otherwise agreed in writing, EVS is under no obligation to provide any support services.

12.2. In the event that EVS and Customer agree on the provision of specific support services, Customer agrees that (a) all support obligations of EVS are only best effort obligations subject to EVS' end-of-life policy available at <https://evs.com/en/end-of-life-products> (through MyEVS access), that

(b) all applicable time of response only relate to the amount of time required to start providing the relevant support services and are not time of correction, that and (c) all on-site support services are invoiced at the then applicable rates. If applicable, Customer shall return defective Products of parts pursuant to article 3.4.

13. Limitation of liability

13.1. To the maximum extent permitted by applicable law, EVS' exclusive liability and Customer's exclusive remedy for any and all claims in respect to any Product or Service delivered or any delayed delivery or non-delivery thereof, shall be limited to the price of the Product or Service in relation to which the claim is made effectively paid by Customer to EVS or, at EVS' option, the replacement or repair thereof, and shall in any event never exceed the sum of EUR 1,000,000 in aggregate.

13.2. In no event shall EVS be liable for any indirect, incidental, punitive or consequential loss, damage, cost or expense of any kind whatsoever and howsoever (including, without limitation, loss of profits or revenues, loss of business, loss of bargain, loss of opportunity, loss of materials, software or data or loss of time) caused, even if foreseeable, or if EVS has been advised of the possibility of such losses.

13.3. EVS cannot be held responsible for any damage as a direct or indirect consequence of a mistake, negligence or inaction, even a minor one, originating from Customer or any person other than EVS or from wrong or incomplete information provided by Customer or caused by external or fortuitous events.

13.4. The security on our Products and Services is treated seriously. EVS uses commercially reasonable efforts to ensure that appropriate security measures have been implemented upon the delivery of the Products and Services. The Customer is however solely responsible for the security of the Products and Services (and any related data) once they have been delivered and shall implement the appropriate security measures in this respect (e.g. firewall and other security software). EVS expressly disclaims any loss or damage arising from Customer's security measures failure.

13.5. Unless agreed otherwise, Customer - and not EVS - is entirely responsible for the content ingested, downloaded, produced, distributed and broadcasted or otherwise made available to third parties, whether publicly posted or privately transmitted, through the Products or Services and the Customer represent and warrant that it owns the Intellectual Property Rights, or have obtained all necessary license(s) and permission(s) to do so.

14. Intellectual property

14.1. EVS is and will remain the sole owner of all the intellectual property rights in the Products and/or Services and the Products may only be connected to or used in combination with other equipment, products or systems (hardware and/or software) specified or approved by EVS as compatible with such Product.

14.2. Upon EVS' acceptance of Customer's purchase order and, subject to the full payment of the relevant applicable price and/or fees, EVS grants to the Customer a non-exclusive, non-transferable, non-assignable, non-sublicensable, personal limited license to use the software residing in or provided with the Product for the Customer's ordinary business activities subject to the present terms and conditions and the EVS Software License Agreement available at https://evs.com/sites/default/files/Software_License_Agreement.pdf. For software license not specifying any specific term or time-based fee payment, and unless otherwise specified in writing, this limited license is perpetual (e.g. sold as "GO" software licenses) and shall continue unless terminated pursuant to these terms and conditions. For software license specifying a term or time-based fee payment (e.g. sold as "FLEX" software license), the said software license will start on the delivery of the related software and expire at the end of the time period specified for this license - and by default, after one year. Unless renewed by mutual agreement, at the end of the specified term, Customer shall no longer use the software and delete and destroy any copies of it. GO software license provides access to software update but not to software upgrade while FLEX software license provide access to both software updates and upgrades during the time period specified for this license. For the purpose of this clause, software update means a move from a software release to the next minor software release that is commercially released and generally made available by EVS in the form of an update (for example: 4.2 to 4.3); software upgrade means a move from a software release to a next major software release that is commercially released and generally made available by EVS in the form of an upgrade (for example: 4.2 to 5.0), only applies to the exact itemized software initially licensed and does not cover corresponding hardware change or software features that are separately priced or licensed.

14.3. Customer shall not (a) reproduce, modify, adapt, alter, translate, or create derivative works from any Products, in all or in part and/or (b) reverse assemble, decompile, disassemble, or otherwise attempt to derive the source code for such Products without having obtained first the written authorization from EVS.

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14.4. For purposes of this article, the term "Customer" shall include authorized end users of the software who have purchased the software indirectly through an authorized EVS' reseller or distributor as well as direct purchasers of the Products.

15. Confidentiality

15.1. Customer acknowledges that all technical, commercial and financial information or data relating to EVS' Products and Services, including but not limited to the offers and technical documentation, whether or not marked as "Confidential" or "Proprietary" (the "Confidential Information") shall be considered as strictly confidential.

15.2. The Customer shall not disclose any such Confidential Information to any third party and shall not use any such Confidential Information for any purpose other than as agreed by EVS.

15.3. In this context, Customer shall take all necessary steps to avoid the disclosure of those Confidential Information and use the same care and discretion as in protecting its own confidential information in order to hold them in confidence (but, in any event, not less than a reasonable degree of care). Customer shall limit the access to those Confidential Information to its directors, employees, sub-contractors, agents, distributors or customers as far as strictly necessary for the use the Products and Services and shall impose them a duty of confidentiality in respect with the Confidential Information.

15.4. These confidentiality obligations shall remain in full force and effect during the negotiations and the term of the Agreement. They shall survive the termination or expiration thereof as long as the said Confidential Information has not come into the public domain.

16. Export and anti-bribery

16.1 Customer warrants that it will comply with the export, re-export and transfer restrictions set forth in export control laws and regulations, including but not limited to the UN, EU and the USA export control laws and regulations ("Export Regulations"), which prohibit export or diversion of certain products and technology to certain countries or entities and to which EVS may be subject to. Customer shall take all actions that may be reasonably necessary to ensure that no customer/end-user contravenes such Export Regulations. If the delivery of Products is subject to the granting of an export or import license or otherwise restricted or prohibited due to Export regulations, EVS may suspend its obligations and the Customer's/end-user's rights until such license is granted or for the duration of such restrictions or prohibitions and/or even terminate the relevant Agreement in all cases without incurring any liability towards the Customer or customer/end-user.

16.2 Customer warrants that it will comply with all applicable anti-corruption laws and regulations and shall take all actions that may be reasonably necessary to ensure that no customer/end-user of Products and Services contravenes with such regulations.

16.3 Customer shall indemnify EVS against any and all direct, indirect and punitive damages, loss, costs (including attorney's fees and costs) and other liability arising from claims resulting from Customer's or its customers' breach or non-compliance with this article.

17. Assignment

17.1 Customer shall not assign any of its rights or obligations under the Agreement without the prior written consent of EVS.

18. Termination – Cancellation

18.1. Any Agreement may be terminated by EVS with immediate effect upon Customer's: (a) material breach to the Agreement and failure to remedy such breach within thirty (30) days after written notification of such breach (provided that there shall be no obligation to notify the Customer is such breach is incapable of being remedied or incapable of being remedied within fifteen (15) days), (b) filing of a petition in bankruptcy not dismissed within thirty (30) days; (c) insolvency; (d) making of an assignment for the benefit of creditors, or the entering into of any other arrangement having similar effect; (e) initiation of proceedings for the dissolution or liquidation of business operations, or (f) any direct or indirect change of control (within the meaning of Article 5 of the Belgian Company Code ("*Code des sociétés*") on Customer, or the direct or indirect acquisition by any person of more than twenty-five percent (25%) of the shares or ownership interests of Customer.

19. Data's privacy

19.1. At EVS we give utmost importance to your data's privacy. EVS generally process your personal data as data controller. Please refer to our Privacy Statement available at <https://evs.com/en/privacystatement> which explains how EVS collects, processes, uses, stores and transfers your personal data as well as your rights over any personal data we hold about you in compliance with the applicable data protection legislation.

19.2. EVS may also process your personal data in very limited cases as data processor. In such cases, the Data Processing Addendum available at https://evs.com/sites/default/files/library_area/evs_181107_-_data_processing_addendum.pdf shall apply in compliance with the applicable data protection legislation.

20. Governing laws

20.1. These terms and conditions are governed by and construed in accordance with the laws of Belgium, to the express exclusion of its conflict of laws rules and to the express exclusion of the United Nations Convention on international sales contracts signed in Vienna on April 11, 1980.

21. Jurisdiction

21.1. All disputes arising out of or in connection with any offer or Agreement with Customer shall first be attempted by the Customer and EVS to be settled through consultation and negotiation in good faith in a spirit of mutual cooperation.

21.2. Any dispute arising out of or in connection with any offer or Agreement with Customer shall be exclusively settled by the Courts of our registered office in Belgium, if Customer has its principal place of business in a Member State of the European Union. If Customer has not its principal place of business in a Member State of the European Union, such dispute shall be finally settled according to the CEPANI (Belgian Center for the Arbitration and Mediation) rules on conciliation and arbitration by one or more arbitrators appointed in accordance of such rules. The place of arbitration shall be Brussels. The proceedings shall be conducted in English and /or French.

22. Miscellaneous

22.1. EVS will not be responsible or liable for failing to perform its obligations under the Agreement to the extent caused by circumstances beyond EVS' reasonable control. EVS' failure to exercise any rights under the Agreement is not a waiver of our rights to damages for Customer's breach of Agreement and is not a waiver of any subsequent breach. If any provision of these terms and conditions is held by any court or authority to be invalid or unenforceable, the other provisions shall remain in full force and effect and shall not be affected or invalidated.