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 (including notably SLA Services ("SLA 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 agree 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 in any case be liable for delays in delivery caused by any case of “force majeure” occurring notably in EVS’ plants or with EVS’ 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 5, 10, 11 and 12. Customer shall return the said Products or parts (a) within 90 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.

4.5. The presentation the related purchase order and/or an invoice by EVS is sufficient to prove the existence and the amount of the claim of EVS towards Customer.

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, become due and payable at once. All unpaid invoices shall carry interest at the rate of 5% per annum, according to the Belgian law of 02/08/2002 on late payment in commercial transactions with a minimum of EUR 50 per invoice.

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

6. Product
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 liabilities 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 prohibit the Customer to use the software and/or related products for any defective Product 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 belonging to EVS’ ownership and in manner to prevent any defective Product from being considered as belonging to Customer.

7.2. In the event of any such delay, the date of delivery shall constitute an exception of the “force majeure” occurrence.

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妇女 and all losses and costs resulting from any defect or non-conformity of the Products at the time of acceptance. Customer shall keep all documents, receipts and other evidence of the time and nature of discovery of any defects.

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 have the rights and obligations of a mutual debtor. In such case, 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.

8.3. 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 equivalent to new) and all losses, damages and costs resulting from any inaccuracies of the Products which Customer could ascertain at the time of receipt of the Products or the provision of the Services or in the following 2 years following 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 subjected 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, except for the costs of the return of the repaired and/or replacement Product or parts thereof, which shall be borne by Customer. EVS 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 costs.

9.2.5. EVS shall bear all costs, risks and applicable insurance relating to the repair or replacement of any defective Product or any defective parts thereof and any other supply or service.

9.3. In the event of replacement of any defective Products or any defective parts thereof, these become the property of EVS upon delivery to Customer of the relevant Products or parts free from defects.

9.4. EVS shall not be responsible 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...
will be governed by order of precedence by the terms and conditions of SLA
available at https://evs.com/sites/default/files/terms_and_conditions_of_sla.pdf, the
applicable SLA will be as SLA Service Description available at
https://evs.com/sites/default/files/sla_service_description.pdf, combined
with the quote and information sent by EVS to the Customer and the
present general terms and conditions of sale (together, the “SLA”) and shall
cover the Equipment in the Covered Sites for the Term as defined in
the aforementioned documents.

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 such claim arises. Any and all security services paid by Customer to EVS or, at its
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, losses or profits or revenue, 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. Any and all amounts paid by an insurance company of the Customer and/or EVS to the Customer in connection to any such damages or loss shall be deducted from EVS maximum aggregate liability and EVS shall pay to the Customer the balance, if any.

13.4. 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 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.

13.5. 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 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.

13.6. 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 software. The Customer is solely responsible for the security of the Products and (any related data) once they have been delivered and shall implement the appropriate security measures in this respect, including but not limited to any implied warranty of merchantability or fitness for a particular purpose. No other remedy, including but not limited to 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 to any loss or damage caused or sustained by or in any way connected with or related to the 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. Software/Services

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’ exclusive owner and that it is authorized by EVS and in particular not to 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 the SLA Service Description, any Advanced or Premium SLA Services is provided by EVS. EVS is under no obligation to provide any support services.

12.2. In the event that EVS and Customer agree on the provision of Advanced or Premium SLA Services (“SLA Services”), the SLA Services are governed by order of precedence by the terms and conditions of SLA available at https://evs.com/sites/default/files/terms_and_conditions_of_sla.pdf, the applicable SLA will be as SLA Service Description available at https://evs.com/sites/default/files/sla_service_description.pdf, combined with the quote and information sent by EVS to the Customer and the present general terms and conditions of sale (together, the “SLA”) and shall cover the Equipment in the Covered Sites for the Term as defined in the aforementioned documents.

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 such claim arises. Any and all security services paid by Customer to EVS or, at its
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, losses or profits or revenue, 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. Any and all amounts paid by an insurance company of the Customer and/or EVS to the Customer in connection to any such damages or loss shall be deducted from EVS maximum aggregate liability and EVS shall pay to the Customer the balance, if any.

13.4. 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 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.

13.5. 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 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, including but not limited to any implied warranty of merchantability or fitness for a particular purpose. No other remedy, including but not limited to 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 to any loss or damage caused or sustained by or in any way connected with or related to the Products other than the liability described and provided for under this article.

10. Trade-in/Upgrade

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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.

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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’ exclusive owner and that it is authorized by EVS and in particular not to 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 the SLA Service Description, any Advanced or Premium SLA Services is provided by EVS. EVS is under no obligation to provide any support services.

12.2. In the event that EVS and Customer agree on the provision of Advanced or Premium SLA Services (“SLA Services”), the SLA Services are governed by order of precedence by the terms and conditions of SLA available at https://evs.com/sites/default/files/terms_and_conditions_of_sla.pdf, the applicable SLA will be as SLA Service Description available at https://evs.com/sites/default/files/sla_service_description.pdf, combined with the quote and information sent by EVS to the Customer and the present general terms and conditions of sale (together, the “SLA”) and shall cover the Equipment in the Covered Sites for the Term as defined in the aforementioned documents.
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.

14.4. For purposes of this article, the term “Customer” shall include authorized end users of the software who have purchased the software instrumentality 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 software comprising 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 of 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 term and for a period of five (5) years after the expiration thereof as long as the said Confidential Information has not come into the public domain.

16. Security

As security for any and all of its obligations, for any reason whatsoever, contractual or extralegal, Customer, towards EVS, the Customer pledges all its current and future claims on third parties, for any reason whatsoever, including, inter alia, claims for services and actions on contractual and non-contractual liability basis.

17. Export and anti-bribery

17.1. 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 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 suspensions or prohibitions and/or whenever the relevant Agreement in all cases without incurring any liability towards the Customer or customer/end-user.

17.2. 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 such regulations.

17.3. Customer shall indemnify EVS against any and all 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.

18. Assignment

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

19. Exception non adempiet contractus

19.1. Customer acknowledges that fulfillment of its obligations (including, without being limited to, the delivery of the Products and Services, the provision software keys allowing the use of any Products, the provision of the Warranty, etc) if, after conclusion of the Agreement, it appears that Customer will not fulfill a substantial part of its obligations notably as a result of a serious failure of its ability to meet that part of its obligations or its creditworthiness; or terminate the fulfillment of its obligations under the Agreement.

19.2. EVS shall not undue delay inform the Customer of its intention to postpone the performance of its obligations and shall continue such performance as soon as Customer provides sufficient guarantees for the fulfillment of the said obligations.

20. Termination – Cancellation

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”)) of 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.

21. Data’s privacy

21.1. 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.

21.2. 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.

22. Use of Customer’s name

Customer agrees that EVS may use Customer’s name and logo to identify Customer as Customer of EVS for use and reference in EVS’ corporate, promotional and marketing material.

23. Governing laws

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.

24. Jurisdiction

24.1. 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.

24.2. 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.

25. Force Majeure

If EVS is prevented to perform or delayed in the performance of this Agreement by reason of force majeure, EVS shall give prompt written notice to the Customer of the event and shall be excused from performance to the extent delayed or prevented by force majeure without being liable for any damages resulting therefrom, provided that EVS shall take reasonable steps to avoid or remove such causes of non-performance and shall continue performance whenever and to the extent such causes are removed. If the force majeure event continues for more than six (6) months, the Customer may elect to terminate this Agreement with immediate effect through a written notice to EVS.

Force majeure shall be understood as any cause or causes beyond the reasonable control of a party which cannot be overcome through reasonable due diligence, such as – without being limited to – strikes, riots, war, acts of terrorism, acts of God, invasion, fire, explosion, floods, epidemic, and acts of government or governmental agencies or instrumentalities.

26. Miscellaneous

26.1. 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.

26.2. 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.