GENERAL SALES TERMS AND CONDITIONS - Thales DIS Finland Oy

1 GENERAL

1.1 These Thales DIS Finland Oy, a company organized and existing under the laws of Finland, (hereafter “THALES”) General Sales Terms and Conditions shall apply to products and related services (hereafter jointly the “Products”) manufactured and/or provided by THALES to a customer (hereafter the “Buyer”). Any proposal or form of proposal howsoever (hereafter the “Proposal”) made by THALES to the Buyer for its Products shall be governed by these General Sales Terms and Conditions which, unless expressly otherwise agreed in writing, shall prevail in the event of a discrepancy with any other written or oral agreement between THALES and the Buyer.

1.2 The Proposal, including without limitation, commercial, technical and financial documents sent to the Buyer together with these General Sales Terms and Conditions, shall be valid for a period of thirty (30) days from the date of its issuance, unless extended by THALES by written notice to the Buyer.

1.3 The Buyer’s written acceptance of the Proposal and/or the placement of an order in writing by the Buyer (hereafter the “Order”) shall be deemed the Buyer’s unconditional and irrevocable agreement to these General Sales Terms and Conditions and the waiver of the Buyer’s own purchase terms and conditions or any other similar document.

1.4 The Proposal may be subject to alteration and withdrawal by written notice of THALES to the Buyer at any time until a contract arising therefrom (hereafter the “Contract”) has been executed in writing by the Buyer’s and THALES’s duly empowered representatives.

1.5 If the Buyer accepts the Proposal with additions, modifications, qualifications or assumptions, such acceptance shall be considered a new offer by the Buyer. Any such new offer shall only be binding upon THALES if and to the extent it is accepted in writing by THALES. Whether the Order was preceded or not by a Proposal, the Contract shall not be deemed binding unless the Buyer has received written acceptance of the Order from THALES, both concerning the Order, and where applicable, the additions, modifications, qualifications or assumptions thereto (hereafter the “Order Acceptance”). In the event of a discrepancy between the Order and the Order Acceptance, the Order Acceptance shall prevail and determine the terms of the Contract. No Order may be canceled or modified after the date of issuance of the Order Acceptance, except with the prior written approval of THALES and provided that all costs resulting therefrom shall be borne by the Buyer.

1.6 The Contract shall consist of:
  - An agreement signed by both parties and/or the Order and its Order Acceptance agreed upon by both parties, including, as the case may be, any complementary specific and/or special conditions of sale;
  - These General Sales Terms and Conditions, which form an integral part of the Contract.

1.7 The Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings (whether oral, in writing or any other form) between the parties.

2. DOCUMENTATION

2.1 The weight, dimensions, size, performance and other specifications of the Products provided for in the technical or commercial documentation (hereafter the “Documentation”) of THALES are of an indicative nature only and are not contractually binding unless expressly indicated so by THALES in the Order Acceptance and/or provided in the Contract.

2.2 The Documentation provided to the Buyer remains the exclusive property of THALES and may not be communicated, copied or reproduced by the Buyer without the prior written authorization of THALES.

2.3 Subject to the terms of the Contract, the Buyer is granted a non-exclusive, non-transferable and non-assignable right to use the Documentation. The Buyer agrees to limit access to the Documentation to those employees who require such access in order to use the Products. The Buyer will not make available or disclose any information concerning the Documentation to any other person without the prior written consent of THALES. The obligations expressed in this provision shall remain binding upon the Buyer even after completion or termination of the Contract. The Buyer shall take all the same precautions to maintain the confidentiality of the Documentation as those employed to protect its own proprietary information.

3. TERMS OF SALE

3.1 The minimum quantity of any Order or Contract shall be of two hundred (200) Products (one thousand (1000), in case of cards) and the minimum price for a batch of any given Product to be delivered under any Order or Contract shall be two thousand euros (EUR 2'000).

3.2 Unless otherwise agreed in writing, all sales of the Products between the parties are deemed concluded “FCA” at THALES’s premises as further specified in the Order Acceptance and/or the Contract.

3.3 The term “FCA” or any other term used to define the terms of sale provided for in the Contract shall be interpreted in accordance with the INCOTERMS 2020 published by the International Chamber of Commerce.

3.4 The carrying out of operations at the request of the Buyer by THALES other than those required by the terms of sale established by the Contract shall in no way modify either the type of sale nor the content of the Contract; the request of the Buyer to carry out such operations necessarily implies that THALES will act in the name of and on behalf of the Buyer. Such
operations and the resulting costs will be invoiced separately to the Buyer who agrees to pay THALES upon receipt of the relevant invoice. In particular, in the event of a sale "FCA", THALES shall remain independent from the contract of carriage even when it may assist, in any manner whatsoever, in the activities of loading or storage to facilitate the task of the carrier.

4. DELIVERY

4.1 Except in the event of provisions to the contrary included in the Order Acceptance and / or the Contract or otherwise agreed in writing, the delivery schedule shall be calculated from the last of the following dates:

- Receipt by THALES of all the information and data necessary for the fulfillment of the Order;
- In accordance with sub-Article 7.1 below, implementation of the financing, upon:
  - Receipt by THALES of a down-payment for the Order, and, as the case may be,
  - Notification to THALES of the opening of the Documentary Credit and acceptance of its terms by THALES;
- Obtention of any license or other official authorization necessary for the import or export of the Products.

4.2 Prior to delivery, the Products will be preserved, packaged or crated in accordance with THALES’s usual standards.

4.3 The Products delivered in accordance with an Order are definitively transferred and may not be either returned or exchanged except in the event of a provision to the contrary.

4.4 THALES reserves the right to make partial and/or anticipated deliveries with partial invoicing for the relevant amount. In particular, THALES reserves the right, for any given Order or Contract, to deliver quantities that may differ from the quantity ordered by the Buyer by up to eight percent (8%), more or less and the Buyer undertakes to pay the price corresponding to the quantity of Products effectively delivered by THALES within that tolerance.

4.5 For each Order of cards products, primary colors will be created by THALES and printed on the cards products on the basis of the proof (i.e. the initial reproduction of the artwork of the concerned cards sent by THALES to the Buyer in electronic or paper format) signed by the Buyer. All other colors will be created and printed on the basis of the Pantone colors chart available in each THALES production site. The difference between on the one hand, for the primary colors the proof and for the other colors the pantone colors chart, and on the other hand the colors printed on the card products shall be measured with a spectrophotometer and will not exceed +/- 3.5 in the CIE 94 colorimetric space (2.1.1) D65/10.

4.6 Should the delivery of the Products or any part thereof be postponed either at Buyer’s request or for any reason not attributable to THALES, THALES shall be entitled to store the Products or any part thereof at Buyer’s risks and expenses. The date of storage shall be deemed to be the date of delivery. In such a case, THALES shall issue and sign a warehouse certificate discharging THALES of all liabilities incurred in connection with such storage.

5. TRANSFER OF RISKS AND TITLE

5.1 Risk in the Products shall pass to the Buyer in accordance with the Incoterm elected for delivery thereof.

5.2 Title to the Products shall vest in the Buyer at the time of delivery.

6. PRICE

6.1 Except in the event of provisions to the contrary included in the Order Acceptance, the prices for the Products specified in the Proposal and Order Acceptance of THALES are fixed and firm for the Contract performance according to the terms and conditions herein contained.

6.2 The prices hereunder set forth are quoted in Euro, which will be the invoicing and payment currency.

6.3 All prices of Products and/or parts thereof to be delivered by THALES under the Contract are to be understood "FCA", THALES premises, according to the INCOTERMS 2020 of the International Chamber of Commerce.

6.4 Without prejudice to the above-mentioned INCOTERMS, all prices hereunder are exclusive of all taxes, customs duties, levies and other charges whatsoever which shall be at the exclusive charge of the Buyer.

6.5 Except in the event of provisions to the contrary included in the Order Acceptance, all prices are valid for thirty (30) days starting with their date of issuance, unless extended by THALES by written notice to the Buyer.

7. INVOICING AND PAYMENT

7.1 Except in the event of provisions to the contrary included in the Order Acceptance, the price of the Contract shall be payable in the currency of the country where THALES has its registered headquarter in the European Economic Area.

7.1.1 If Buyer has its registered headquarter in the European Economic Area

- **Down payment**: The Buyer shall pay THALES an amount equal to thirty percent (30%) of the Contract price against remittance by THALES of a proforma invoice for the amount mentioned here above; said down payment shall constitute a condition precedent to the coming into force of the Contract and shall be paid by direct bank transfer.
- **Balance of the price**: all payments shall be made through direct bank transfer within thirty (30) days from the date of issuance by THALES of the relevant invoice.
7.1.2  If Buyer has its registered headquarter outside the European Economic Area

- **Down payment**: the Buyer shall pay THALES an amount equal to thirty percent (30%) of the Contract price against remittance by THALES of a proforma invoice for the amount mentioned hereabove; said down payment shall constitute a condition precedent to the coming into force of the Contract and shall be paid by direct bank transfer.

- **Balance of the price**: all payments shall be made through an irrevocable, transferable, divisible, extendible and confirmed documentary credit (herein referred to as the "Documentary Credit") allowing partial shipments to be opened, as a condition of Contract coming into force, at the Buyer's expense within thirty (30) days following the date of the signature of the Contract. The Documentary Credit shall be opened by a first class bank in the Buyer's Country, notified, confirmed and payable to THALES by its bank. Said Documentary Credit shall be valid for the period of delivery of the Products and shall be extended without any further instructions by three (3) months periods at THALES's request in order to allow its complete drawing. The Documentary Credit shall be construed in accordance with the Uniform Customs and Practice for Documentary Credit of the International Chamber of Commerce (UCP 600).

7.2  Early payment shall not result in the granting of any reduction in the price by THALES.

7.3  In the event Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to THALES, THALES may, without limitation, (i) postpone the fulfilment of its own obligations until full payment of the sums due for the principal; (ii) charge Buyer interest on the amount unpaid, equal to the bid interest rate published by the European Central Bank during its most recent main refinancing operation increased by ten (10) percentage points, per annum until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest); (iii) terminate the Contract upon expiry of a seven calendar (7) day written notice of THALES to the Buyer which has remained without effect.

7.4  In the event of a payment delay by the Buyer, THALES may also require for any new delivery (regardless of the conditions that may have been agreed), payment prior to shipment or suspend or cancel any pending Contract or Order without incurring any liabilities whatsoever.

7.5  THALES reserves the right to establish, at any time, a limit for outstanding credit in favor of the Buyer, and adapt the applicable payment periods accordingly.

7.6  No discount will be accepted for advance payments except in case of prior written consent between the parties.

8.  ACCEPTANCE TESTING

8.1  If an acceptance testing procedure is provided for in the Contract, an acceptance testing shall be carried out, after completion of manufacture and before delivery of the Products, at the premises of THALES, within a maximum period of fifteen (15) calendar days from the date of issuance of the written notice for acceptance testing sent by THALES. Any acceptance testing will be at the expense of the Buyer and performed in accordance with the THALES standard testing procedures then in force.

8.2  The Buyer shall have the right to attend the acceptance testing subject to written notification to THALES of the names and biodata of its representatives at least three (3) calendar days prior to the above-mentioned anticipated date. Failure of the Buyer to attend shall not delay or prevent the performance of such acceptance testing. THALES may subsequently carry out the acceptance testing, in accordance with article 8.1, the terms of which will thereafter be deemed completed.

8.3  Upon completion of the acceptance testing, THALES shall issue, sign and submit to the Buyer's signature a report, which shall be signed by the Buyer no later than five (5) calendar days from its submission. Should the Buyer refuse to sign the said report, the Buyer shall so notify THALES in writing by substantiating the non-conformities within the same five (5) day period of time. Should the Buyer fail to sign the report without notifying THALES as per above, the report signed by THALES shall then have the same value and effect as if both parties had signed it.

8.4  Non-conformities evidenced during the acceptance testing shall be made good by THALES within a reasonable time. Non-conformities not affecting the functional characteristics of the Products shall not constitute a ground for rejection thereof. Such non-conformities shall be corrected by THALES before delivery.

8.5  Any and all costs incurred pursuant to inspections, and the lodging and travelling expenses of the Buyer's representative shall be borne by the Buyer.

9.  WARRANTY

9.1  THALES hereby warrants the Products to be free from defects in materials and workmanship under normal use and service for a period of twelve (12) months from the date of delivery. The Buyer shall notify THALES of the defects in writing within seven (7) calendar days after the defects are discovered, and the notice shall thoroughly describe the conditions under which the defect has arisen in order to facilitate the diagnostic of the defect. If the Products are defective, the defects of the Products returned by the Buyer will be made good at THALES's expense by repair or replacement at THALES's option. The property of the defective Products shall pass to THALES upon delivery of the replacement. Transportation and insurance costs for defective parts returned to THALES shall be at the Buyer's charge and transportation and insurance costs for parts replaced or repaired by THALES shall be at THALES's charge. For the Products which have been replaced or repaired by THALES hereunder, THALES shall have the same liability as set out in this Article 9.1. The Products are provided "as is" and THALES's warranty hereunder is strictly limited to the repair or replacement of defective parts. The above warranty shall apply only in as much as the Products have been used and maintained in compliance with THALES's instructions for use.
This warranty shall not apply to consumable and extendible items (such as batteries, fuses...) and to defects arising from or connected with Buyer’s failure to operate or maintain the Products in accordance with THALES’s specifications and documentation and generally with standard practices of product operations and shall not be applicable to defects arising from or connected with (i) any combination of the Products with equipment, materiel, products or systems not furnished, not approved or not specifically recommended by THALES (ii) or any modification of the Products performed by others but THALES (iii) or any accident, vandalism, negligence or handling errors causing damage to the Products (iv) or normal wear and tear (v) or defective installation, maintenance or storage (vi) technical maintenance or interventions on the Products other than those deemed necessary by THALES. For Products resold as is and components that THALES purchases from suppliers, THALES’s warranty is strictly limited to the terms granted to THALES by its suppliers.

9.2 THALES does not and shall not warrant that the Products will be resistant to all possible attacks and shall not incur, and disclaims, any liability in this respect. Even if each Product is compliant with current security standards in force on the date of their design, the Buyer acknowledges that the resistance of the security mechanisms necessarily evolves according to the state of the art in security and notably under the emergence of new attacks. Under no circumstances, shall THALES be held liable for any third party actions or claims and, in particular, in case of any successful attack against systems or equipments incorporating the Products.

9.3 The warranty in this clause and the rights and remedies of the Buyer hereunder are exclusive and in lieu of and the Buyer hereby expressly waives any other warranties, rights or remedies whether statutory, express or implied arising by law or otherwise with respect to any defects in or failures of the Products. In particular, THALES does not warrant that the Products will be resistant to all possible efforts to defeat or disable its functions, including its security mechanisms, and THALES shall not incur, and disclaims, any liability in this respect.

10. LIABILITY

10.1 To the maximum extent permitted by applicable law, THALES or its suppliers, agents or distributors shall not be, in any case whatsoever, liable to the Buyer, its officers, agents, employees, successors and/or assignees for any indirect, special, consequential or incidental damages of whatsoever kind or nature arising out or in connection with the Contract, including but not limited to any loss, cost, damage, loss of revenue, loss of profit or loss of use, incurred or suffered by the Buyer or any third party resulting from a defect, infringement or alleged infringement, an incident, the failure of the Products or any fault in the performance of the THALES’s duties and/or obligations under the Contract, provided however that the aggregate liability of THALES or its suppliers, agents or distributors in connection therewith shall not exceed either (i) the price of the Order giving rise to the claim or (ii) the total price actually paid to THALES under the Contract during the six (6) months preceding the event leading to the claim for damages by the Buyer, whichever is smaller.

Under no circumstances shall THALES be liable to the Buyer for any damages resulting from or arising out of any illegal and/or fraudulent use of the Products by the Buyer, any third party or the end-user.

10.2 The foregoing shall not affect Buyer’s right to claim compensation against THALES for damages suffered by the Buyer arising directly from the performance, bad performance or non-performance of THALES’s duties and/or obligations under the Contract, provided however that the aggregate liability of THALES or its suppliers, agents or distributors in connection therewith shall not exceed either (i) the price of the Order giving rise to the claim or (ii) the total price actually paid to THALES under the Contract during the six (6) months preceding the event leading to the claim for damages by the Buyer, whichever is smaller.

11. FORCE MAJEURE

11.1 THALES shall not be in default if the performance of any of its obligations under the Contract is partly or wholly delayed or prevented by reason of Force Majeure.

11.2 “Force Majeure” shall mean any event beyond the reasonable control of THALES such as, without limitation: governmental decision, embargo, war, hostilities, act of the public enemy, terrorist attacks anywhere in the world, civil commotion, sabotage, fire, flood, explosion, epidemics, quarantine restriction, disturbances in supplies from normally reliable sources (including without limitation electricity, water, fuel and the like), strike (either at THALES or its suppliers or subcontractors), lock-out and labour disturbances, delay from a supplier or subcontractor facing a case of force majeure as defined herein.

11.3 In case of Force Majeure, THALES shall give notice of the event to the Buyer and the time schedule for the performance of the Contract shall be automatically extended by the period of time as reasonably necessary for THALES to overcome the consequences of such event.

11.4 If the performance in whole or part of any THALES’s obligation is delayed or prevented by reason of Force Majeure for a period exceeding three (3) months, THALES may at any time without further liability to the Buyer, request termination of the Contract or any part thereof. The Parties will then try to establish by mutual agreement a liquidation settlement, failing which the provisions of Article 15 shall apply. However, Force Majeure shall not prevent or delay the payment of any sum due or to be due by either Party.

12. RE-EXPORTATION

Should the Products be subject to export restrictions, the Buyer hereby undertakes not to sell, lend or deliver to any third party under any conditions whatsoever, with or without compensation, temporarily or permanently, the Products (including supplies and spares delivered in connection with the after sales support), documentation, operating manuals and information in any way whatsoever related to the Products, without the prior written consent of THALES and/or the relevant competent authorities.
13.1 The information and data (hereafter the "Information") contained in any document or support of information supplied by THALES under the Proposal or the Contract shall remain THALES’s exclusive property along with all intellectual property rights (including but not limited to patent rights, copyrights, trademarks, designs) attached thereto. Therefore, no right, title or interest is transferred to the Buyer by the Contract in the names, trademarks, trade secrets, patents, pending patents, expertise, copyright and other intellectual property rights relating to the Products. In particular, to the extent that software is embedded in a Product, the sale of such Product shall not constitute the transfer of ownership rights or title in such software to Buyer, but, subject to the provisions set forth herein, shall only imply a non-exclusive and non-transferable license to Buyer under THALES’s intellectual property rights (i) to use such software in conjunction with and as embedded in the Products as supplied by THALES, and (ii) to use such Product in or in conjunction with products of Buyer, if and to the extent infringement of THALES’s intellectual property rights necessarily results from applying one or more Products.

The Buyer shall not make any use of the Information other than for the purpose of the Contract or, as the case may be, installing, operating and/or maintaining the Products. THALES retains and shall retain full ownership of all inventions, designs and processes made prior to or during the course of performance of any Contract resulting therefrom.

13.2 The Buyer shall keep the Information in strict confidence and shall not disclose any of the Information to any other person than the Buyer's employees who need to know such Information for the purposes stated in sub-Article 13.1. Any other disclosure shall be subject to THALES’s prior written approval.

13.3 THALES shall hold harmless, protect and indemnify the Buyer against any and all claims, costs, expenses or liability directly arising out of the alleged infringement or infringement of patent, copyright, trade secret rights in the Buyers’ country as a consequence of the use by the Buyer of the Products in accordance with their technical specifications, provided that the Buyer shall promptly notify THALES in writing of any claim, that no claim may be made after a period of three (3) years from the date of delivery of the Product giving rise to the claim, that the Buyer shall provide all information and assistance required by THALES concerning the claim or action, that the Buyer shall give THALES the opportunity to defend and settle under the responsibility of THALES any lawsuit in this respect and that the Buyer shall refrain from making any admission, declaration or arrangement with the third party raising such claims.

The foregoing obligations to hold harmless, protect and indemnify the Buyer shall not apply to THALES for Products for which THALES has not obtained a similar warranty from its supplier(s) and shall not apply either to THALES for any alleged infringement or infringement that is due to or based upon (a) the association or combination of the Products with any other article, software, hardware, apparatus or device, and/or (b) any alteration or modification of the Products which is not made by THALES or which is based upon a design supplied by the Buyer.

13.4 Should a court or an arbitrator finally establish that there has been a patent infringement or should THALES consider that the Products could be the subject of a claim or suit for infringement, THALES may choose at its option one of the following solutions:
- to obtain the right for the Buyer to continue using the Products,
- to substitute equivalent products for the infringing Products,
- to modify infringing Products so as to eliminate the infringement.

13.5 Subject to Article 10, the foregoing states the entire liability and warranty of THALES with respect to the infringement of any patent, copyright, trademark or trade secret of or any intellectual property right by the Products or any part thereof.

13.6 The Buyer on its part warrants that any design and/or instructions furnished or given by it shall not be such as will cause THALES to infringe any intellectual property rights in the performance of the Contract. The Buyer shall, in this respect, hold harmless and protect THALES in the same way as provided under sub-articles 13.3 and 13.4.

14. WASTE OF ELECTRICAL AND ELECTRONIC EQUIPMENT

14.1 Pursuant to the Directive 2002/96/CE on waste electrical and electronic equipment (WEEE), to the Directive 2002/95/CE on restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS) and to the applicable national transposition legislation and/or regulation, the financing of the management of WEEE may be transferred from the manufacturer to the users.

14.2 Unless otherwise agreed in writing between the Parties, the Buyer hereby accepts such charge and shall therefore:
- Be responsible for financing the collection, treatment, recovery, recycling and environmentally sound disposal of (i) all WEEE arising or deriving from the Products and (ii) all WEEE arising or deriving from products already on the market as of August 13, 2005 where such products are to be replaced by the Products and such products are of an equivalent type or are fulfilling the same function as that of the Products;
- Comply with all additional obligations placed upon the users by the WEEE regulations by virtue of the Buyer accepting the responsibility set out in this sub-article 14.2.

14.3 The above-mentioned obligations shall be passed on by successive professional buyers to the final user of the WEEE, always under the Buyer’s responsibility. Non-compliance by the Buyer with the above-mentioned obligations may lead to the application of criminal sanctions, as laid down in the applicable national transposition legislation and/or regulations.

15. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

The Proposal and the Contract shall be governed by and construed in accordance with the laws of Finland excluding its conflict of laws provisions. The application of the United Nations Convention on Contracts for the International Sales of Goods (1980) shall be expressly excluded.
All disputes arising out of or in connection with this Agreement and/or in formation thereof shall be resolved by the competent Courts of Helsinki, Finland.

16. ASSIGNMENT

Neither THALES nor the Buyer shall, without the express prior written consent of the other (which consent shall not be unreasonably withheld) assign to any third party the Contract or any part thereof, except that THALES shall be entitled to assign the Contract or any part thereof to (i) any affiliated and sister company and, in particular, any monies due and payable to it under the Contract (ii) any third party in connection with a merger, sale of substantially all of THALES’s assets or a change of control.

17. ANTI CORRUPTION & INFLUENCE PEDDLING

The Parties shall always act in accordance with the applicable national and foreign laws and regulations for the prevention of risks of corruption and influence peddling and in particular French law n° 2016-1691 of 9 December 2016 relating to transparency fight against corruption and modernization of the economy (“Sapin II Law”). Whether directly or through third parties, the Parties shall not offer or promise any gift or advantage to a person, for himself or for others, with the purpose that this person abuses or because this person would have made illegitimate use of its real or supposed influence in order to obtain distinctions, jobs, contracts or any other favorable decision. The Parties shall not solicit or accept for itself any offer, promise, gift or advantage of any kind, to make illegitimate use of its influence for the purpose of making or obtaining any favorable decision.

18. TERMINATION

18.1 THALES may terminate the Order and/or its obligations hereunder at any time upon:

- Default by Buyer in the payment of any amount due to THALES hereunder;
- Buyer’s failure to pay any debt to THALES;
- Buyer’s bankruptcy, insolvency or receivership;
- Breach by the Buyer of the Article 17 “Anticorruption and influence peddling”;
- Any material default by the Buyer under the Order not cured within fifteen (15) days of the date THALES notifies Buyer of such default.

18.2 The licenses granted under this Order shall terminate immediately upon the termination of this Order.

18.3 The Order shall be firm and binding and may not be cancelled by Buyer except with and upon THALES’s prior written consent.