

# GENERAL TERMS AND CONDITIONS GOVERNING ALL RELATIONSHIPS BETWEEN ASSYST EUROPE AND ITS CUSTOMERS

(Version 2.0 November 2014)

## ART. 1. INTRODUCTION

The present general terms and conditions apply to all agreements concluded between ASSYST EUROPE SPRL (BCE/KBO 0874.914.462) or its subsidiaries in Belgium (hereinafter "ASSYST EUROPE" or "We") and its customers (hereinafter, "Customer" or "You") and, in general, to all their business relationships. Where appropriate, these general terms and conditions are supplemented by special conditions (including in particular the Global IT Services Agreement).

Our terms and conditions may be amended only by express agreement in writing between the parties.

They are deemed to be accepted by the Customer by the mere fact of placing the order, even if in contradiction with the latter's own general or specific terms and conditions that are in any case formally excluded. The vendor's general terms and conditions may be waived only the latter's express agreement in writing.

Any agreements made with employees, agents or representatives of ASSYST EUROPE, as well as orders addressed to the company, are enforceable against it only if confirmed or accepted by management in writing.

Any order by the Customer is binding on it. The employees, salespersons, agents or intermediaries of the Customer are irrefutably presumed to be duly mandated to commit it towards us. Any order for which the invoice is addressed to a third party at the Customer's request renders the order-giver and the third party jointly and severally liable for the performance of all obligations under the general and special conditions.

ASSYST EUROPE reserves the right to modify the present terms and conditions at any time. The newly modified general terms and conditions shall apply immediately except with regard to orders already accepted by ASSYST EUROPE, which continue to be governed by the general terms and conditions in effect at the date of confirmation of the order.

The payment of an invoice including the new conditions shall be deemed to represent the acceptance of the new general terms and conditions in force.

## ART. 2. CONFORMITY

2.1 ASSYST EUROPE undertakes to make every effort to ensure the compliance of the goods supplied.

It warrants only the conformity of the goods and services delivered with what is specified in the order.

2.2 The Customer is also required to perform a check on delivery and/or installation. In the absence of any remarks, the goods will be deemed to be as ordered and no claim will be accepted beyond 10 days from delivery date.

2.3 Prior to signing the contract, the Customer shall obtain all necessary advice and ensure that the hardware, software and/or services it intends to order correspond to its needs and to the use it intends to make of them. We assume no liability for an error of choice or judgement by the Customer.

## ART. 3. SOFTWARE/LICENCES

3.1 Our computers are, by default, delivered without operating systems. They are tested on Windows 7 & Windows 8, but out of respect for copyright and legal provisions, the operating systems used in the tests will be removed from them.

The following options therefore apply for all new computers leaving our workshops: either they are without operating system, or they are configured with the official operating system purchased together with the computer (Microsoft OEM version), or they are configured with the operating system previously supplied by the Customer (Microsoft Open licence - MOLP, Select contract, lease contract - OSL - etc.).

3.2 The software delivered remains the builder's exclusive property. We grant the Customer only non-exclusive user licences authorizing the personal use of a program on one machine at a time for the agreed period.

The Customer must scrupulously respect the confidentiality of the delivered software. It may not, in any form whatsoever, allow other parties to use these licences, pledge them, surrender possession of them, or communicate or lend them either for a fee or free of charge. It undertakes not to counterfeit the delivered software, or to permit or encourage the counterfeiting of the same in any way whatsoever.

The Customer is required to comply with the licensing contracts of the publisher and of all persons having ownership rights on the product. In no event is ASSYST EUROPE liable for any multiple installation and use of pirated software installed at the Customer's premises.

All systems, analyses, programmes, working methods and other means developed by ASSYST EUROPE and applied for executing the contract are covered by copyright legislation and remain the exclusive property of ASSYST EUROPE.

The Customer may not therefore claim any property right whatsoever to the techniques used in programming, analysis or execution, nor claim property rights to the methods developed and applied.

## ART. 4. WARRANTY

4.1 The hardware and software provided by ASSYST EUROPE are, by express agreement, covered by the sole warranty of the manufacturer of the hardware and software. All manufacturers' warranty clauses normally accompany the hardware and software provided via ASSYST EUROPE. With respect to such hardware and software ASSYST EUROPE does not provide any kind of warranty whatsoever. The Customer represents that it has good knowledge of the manufacturers' warranty conditions and undertakes to comply with the requirements that these clauses place on the Customer for the proper operation of the warranty clauses.

4.2 We do not warrant in any way the ability of an item of hardware or software to respond to a problem that is specific to the Customer's activity. Moreover, any defects unknown to us that could affect the software are not covered by the warranty. The granting of the warranty assumes that the delivered products are used in a responsible fashion (*en bon père de famille/zoals een goede huisvader*) according to the terms of the offer or under normal conditions of use as mentioned in the catalogues, data sheets and manuals made available to the Customer.

4.3 The Customer may also subscribe a warranty extension or a maintenance agreement proposed as an option by ASSYST EUROPE, with the intention, if necessary, of extending the term, and of including diagnosis costs, non-consumable spare parts, all labour and travel costs as well as the provision of replacement equipment.

4.4 For computers assembled by ASSYST EUROPE, the warranty period is 12 months (parts and labour).

4.5 The labour costs of diagnosis time or repair work resulting from the consequences of the original failure are never covered by the warranty.

4.6 The warranty does not apply if the unit has been maintained, converted, repaired or dismantled by persons not mandated by ASSYST EUROPE or the manufacturer itself. It does not apply if the device was in an environment not in conformity with the specifications, and if the usual precautions had not been taken in respect of the hardware in the light of the highly

technical nature of the parts as well the fragility of certain of them (hard drives, memories, processors, etc.).

4.7 The warranty shall be void if the serial numbers and/or warranty seals have been removed, damaged or deleted.

4.8 The warranty covers solely physical defects of the hardware support. In a general manner, the warranty shall cease to apply if it appears that the failure stems from a cause external to the equipment covered by the warranty.

4.9 The warranty does not cover software interventions (operating system and applications). It does not cover either the cost of upgrades or software patches.

4.10 The equipment that is the subject of a warranty claim must be returned in its original packaging complete with all accessories (diskettes and/or CD-ROMs of drivers and software, cables, documentation, etc.).

4.11 The invoice must always be presented with any request for intervention under warranty.

4.12 The equipment must be tested by our technical service or a service mandated by ASSYST EUROPE before repair or replacement with a new current or equivalent product. The replaced product or part shall become the exclusive property of ASSYST EUROPE. The technical intervention and/or travel expenses may however be charged if the equipment is found to be non-defective. The rehabilitation or replacement of equipment under warranty shall not extend in any way the warranty.

4.13 Any equipment deposited for repair becomes the property of ASSYST EUROPE if not claimed within six months after notification by ASSYST EUROPE that the equipment can be taken back, and without the value of the equipment acquired in this way compensating all or part of the amount of any unpaid invoices.

4.14 In accordance with Article 1649<sup>quater</sup> of the Civil Code, if the Customer is a buyer under article 1649<sup>bis</sup> of the Civil Code (that is to say, a "private" consumer within the meaning of this provision), it is then entitled to a legal warranty for any lack of conformity existing when the goods were delivered and which becomes apparent within a period of two years from delivery. Subject to the presumption referred to in Article 1649<sup>quater</sup> § 4 of the Civil Code ("a lack of conformity becoming apparent within 6 months from the delivery is presumed to exist at the time of delivery"), the onus lies on the consumer-Customer to prove, from the expiry of this six-month period up until the end of year 2, the existence of non-compliance at the time of delivery. The consumer-Customer shall be required to inform ASSYST EUROPE by registered letter of the existence of the lack of conformity within two months from the date when the buyer discovered the same. By failing to respect this notice period, the consumer-Customer shall forfeit the opportunity to invoke the warranty. To benefit from the legal warranty, the original sales receipt must always be presented along with any request for warranty intervention, in such a way as to be able to verify that ASSYST EUROPE is actually the final seller of the product. The warranty is void if the serial numbers and/or warranty seals have been removed, damaged or deleted. It is strongly recommended that the equipment be presented in its original packaging complete with all accessories (diskettes, CD-ROMs of drivers and software, cables, documentation, etc.). The presentation of the original packaging is mandatory in order to effect the warranty in those cases where the product identification references are on the packaging. The consumer-Customer must first imperatively make a backup of the data. ASSYST EUROPE cannot be held responsible for the protection of the data contained in the hardware entrusted to it. The tests for assessing whether or not the warranty applies, or any other technical operations can potentially damage this data. The equipment will be tested in advance by ASSYST EUROPE's technical service. If the equipment is not defective, test costs calculated based on our usual hourly rate will be charged to the consumer-Customer, with a minimum of € 50 including VAT. ASSYST EUROPE reserves the right to send the equipment to its supplier, the latter being in certain cases the only one technically able to verify the nature and the causes of the failure. The consumer-Customer must wait the necessary time to this examination by the supplier.

## ART. 5. PRICES

All our prices are net ex-VAT from our operating premises, with costs and taxes on top. Orders taking more than a month to deliver are accepted subject to any price increases that are imposed on us by our own suppliers and subject to circumstances beyond our control that might subsequently make delivery impossible or more expensive. In any case, the goods will be charged at the pricing conditions in effect at the date of delivery, regardless of the price at which they may have been confirmed or the deadline for or the possibilities of supply.

## ART. 6. SUPPLY OF SPARE PARTS

The Customer who buys spare parts and accessories is expected to possess the requisite technical skills for inserting them according to the rules of the art. The intervention of the technical service for providing advice, information or other services is not included in the price of spare parts.

We expressly reserve the right to make partial deliveries constituting as many partial sales. In no event shall such partial delivery justify the denial of payment for delivered products. Where circumstances make it impossible to execute the delivery or the service - including all cases of force majeure such as strikes, lockouts, accidents, bad weather, blockades, import or export bans, cessation of production or delivery by the manufacturer, etc. -, we expressly reserve the right to deliver products equivalent to those specified in the order or to terminate our commitments to the Customer, all without compensation.

## ART. 7. ADVANCE PAYMENT

An advance payment of between 20% and 40% can be requested with orders. Advance payments from Customers are credited against the price of the order and do not constitute a deposit, the abandonment of which permits the parties to withdraw from the contract.

## ART. 8. DELIVERY DEADLINES

The delivery deadlines specified in the contract are given for information only and are not mandatory. We do everything possible to meet meet delivery deadlines. Unless otherwise expressly provided, a delay in delivery can in no circumstances entitle the Customer to cancel an order, and no compensation may be demanded.

## ART. 9. FORMS OF INTERVENTION

9.1 Deliveries and services are performed at the place of installation stated in the order and, failing that, to the Customer's registered office. The Customer shall ensure that the premises where the equipment is to be placed in service, the air conditioning and the power supply all comply with the specific features of the equipment. All services rendered necessary by failure to prepare the site will be invoiced additionally. The equipment will be considered as approved once installed and brought into service. The risk of loss or damage to the equipment passes to the Customer upon delivery.

9.2 It is the Customer's task to make all information required for the invention available to the technician and/or consultant.

## ART. 10. LIABILITY OF ASSYST

10.1 In general, ASSYST EUROPE is subject to an obligation of means (*obligation de moyen/inspanningsverplichting*). During installation or technical interventions, we do everything possible to maintain maximum vigilance and take maximum care in respect of the equipment (containing the Customer's programs and data) entrusted to us. At the Customer's request, we can also backup and transfer these before replacing or installing a complete system or a defective part that contains data. This service will be charged at our usual hourly rate specified in the quotation. The Customer is duly informed of any safeguarding measures that can be implemented such as daily backup, mirror disk with periodic updates etc.

10.2 In the event of non-performance and/or faulty operation of systems, analyses, programs, working methods or other means developed by ASSYST EUROPE and applied for the execution of this contract, the liability of ASSYST EUROPE is strictly limited to restoring the proper functioning of the aforementioned systems analyses, programs, working methods or other means implemented. The liability of ASSYST EUROPE does not cover hardware elements that are covered only within the manufacturer's warranty.

10.3 ASSYST EUROPE is not responsible for the non-functioning and/or malfunction of technologies, methods or programs:

- that have not been developed or placed in use by its own services or which have been modified or serviced by unauthorized third parties or by the Customer outside of any intervention by ASSYST EUROPE.

- that are due to external events or causes or force majeure which are outside the ordinary and reasonable control of ASSYST EUROPE and which hamper the normal performance of the contract.

10.4 In no event may we be held liable, either contractually or extra-contractually, for damage caused to persons or property other than the delivered products or products that are the subject of our provision of services. We are not bound to compensate the Customer or third parties for consequential damages. Consequential damages shall include, among others, any loss or corruption of data, loss of profits, loss of customers, etc.

10.5 In any event, if ASSYST EUROPE is held liable for the non-performance or improper performance of the contract, this liability is strictly limited to the amounts paid by the Customer during the 6 months preceding the origin of the damage, without exceeding, in any event, the insurance coverage underwritten by ASSYST EUROPE under the insurance policy subscribed with AXA [policy no. 730209841] and the general and special terms and conditions of said policy. The details of this policy shall be presented to the Customer on request.

10.6 No action may be taken by the Customer against ASSYST EUROPE, for any reason whatsoever, more than one year after the occurrence of the event on which it is based.

#### **ART. 11. CUSTOMER'S LIABILITY**

11.1 The Customer undertakes, both in respect of itself and its staff and any person to whom it entrusts work, to keep strictly confidential the information entrusted to it by ASSYST EUROPE.

11.2 The Customer undertakes to provide the ASSYST EUROPE technical teams with easy access to its facilities.

11.3 The Customer agrees to comply strictly with the instructions for use and the safety recommendations and precautions that are communicated by ASSYST EUROPE under to the contract, failing which the warranty of service provided by ASSYST EUROPE shall cease to apply.

11.4 The Customer undertakes not to intervene or bring in a third party for monitoring, management and configuration of the network without the prior written consent of ASSYST EUROPE.

11.5 The Customer shall be required to ensure a minimum of surveillance of the network and in particular with regard to any malfunctioning observed by it such as:

- audible alarms, error messages, email notifications ...
- anomalies in the environment such as sudden power cuts, breakdown of the air conditioning of the server premises, or a dust-laden environment.

When such anomalies are observed, it shall immediately inform ASSYST EUROPE of the same.

11.6 The protection against computer viruses is provided by the software for which the Customer is responsible:

- Any failure or malfunction in the operation of this software that may be detected by the Customer in the normal course of operations must be immediately reported to ASSYST EUROPE.

- The good operation of the protection system requires vigilance and ongoing collaboration between the Customer and ASSYST EUROPE.

- The Customer is responsible for compliance both by itself and by its employees with all safety instructions. These include the daily monitoring of the normal operation of the anti-virus software and monitoring the entire system to ensure that it is virus-free.

- ASSYST EUROPE's liability in the event of the failure of the anti-virus protection system is strictly limited to restoring the functionality of the protection system. It is expressly agreed that ASSYST EUROPE shall incur no liability for any losses incurred by the Customer, whatever the cause or origin that could be due to a computer virus.

11.7 The Customer's attention is specially drawn to the fact that it is its responsibility to:

- keep a backup copy of its data at a site that is geographically separate from the site containing the IT installations.

- subscribe, if appropriate, an insurance policy covering the consequences of data loss.

In the event of data loss due to a handling error by ASSYST EUROPE or its employees, ASSYST EUROPE shall bear the costs of the attempts to recover, transfer or restore the data.

#### **ART. 12. CONFIDENTIALITY**

ASSYST EUROPE guarantees absolute discretion regarding the data entrusted to it and the results of processing performed by it. ASSYST EUROPE personnel are required to maintain confidentiality.

#### **ART. 13. FORCE MAJEURE**

ASSYST EUROPE declines all liability for delays in or failure to make delivery resulting directly or indirectly from force majeure or events beyond its control, such as slowing or interruption of production, mobilization, war, riot, strike, lock-out, administrative restrictions, in particular on exports or imports, or transport delays. It is expressly agreed that ASSYST EUROPE may invoke the cases of force majeure encountered or simply alleged by its suppliers. In addition each party shall be entitled to terminate the agreement if the state of force majeure lasts more than six months. This decision must be notified by registered letter with acknowledgment of receipt.

#### **ART. 14. TRANSPORT**

ASSYST EUROPE is responsible for the transportation of goods when ASSYST EUROPE takes care of delivery. The Customer is responsible when it comes to pick up itself the goods at our offices, which implies that there has been a prior control by both parties.

#### **ART. 15. PAYMENT CONDITIONS**

15.1 The sales prices of products and technical interventions appear in the commercial offer referred in the order note in respect of the goods supplied or in the contract (special conditions). Invoices are payable within deadline mentioned in the offer or contract (special conditions). Where no payment deadline is mentioned, they are payable cash on delivery. All our invoices are payable in EURO. Non-delivery or delay in delivery of certain products and/or

services do not in any event authorize the non-payment of all or part of previously delivered products and services.

15.2 Non-payment of all or part of an invoice when due leads ipso jure and without formal notification to the application of delayed payment interest at the rate of one percent per month for every commenced month, in addition to the application of a lump sum penalty of 15 percent of the unpaid amount, and not lower than € 150 excluding VAT.

15.3 Any claim relating to an invoice, other than those provided for in Article 7, shall be sent to us by registered letter within five working days of receipt, which is presumed to take place within three working days of the date given on the invoice. After this deadline, no claim shall be admissible. A claim may in no case justify suspension of payment.

15.4 Where the payment default continues for more than eight [8] calendar days after the sending of formal notice by registered letter, any other benefits arising from contracts or orders in progress are suspended until full payment of amounts owed in principal, interest and penalty. EUROPE ASSYST's obligations for delivery or performance shall resume only on the third day following receipt of payment on ASSYST EUROPE's bank account.

15.5 Finally, the failure to pay an invoice when due, the protest of a non-accepted bill of exchange, any request for amicable or judicial composition or for suspension of payment or any other facts that could potentially imply that the Customer is insolvent, shall lead automatically and without requirement to give formal notice to all outstanding invoices being immediately due and payable. Moreover, these situations entitle us to suspend all our obligations without formality and terminate all or part of ongoing contracts without other formality than notification by registered mail and without compensation.

#### **ART. 16. DOMICILE**

Each party elects domicile at the address indicated in the general terms and conditions. In order to be legally valid, all documents must be sent to this address.

#### **ART. 17. RESERVATION OF OWNERSHIP**

17.1 ASSYST EUROPE retains ownership of goods supplied until payment thereof. The restitution of goods that are wholly or partly unpaid may be demanded by registered letter.

#### **ART. 18. CLAIMS**

18.1 All claims must be sent by registered letter with acknowledgment of receipt within 10 days from the date of delivery of the goods or the performance of an intervention. After this deadline, the claim will not be accepted and no return of the products will be accepted.

18.2 The technical information provided is based on current experience of vendors and technicians and is provided in good faith for information purposes.

#### **ART. 19. NO HIRING-AWAY CLAUSE**

For the duration of any contract for the provision of services and during a period of six months following the ending of the same (starting from the payment of the final invoice sent by ASSYST EUROPE), the Customer undertakes not to attempt to hire, direct or indirectly, on a part time or full time basis, both during or outside working hours, any of our employees, under penalty of paying us an irreducible indemnity of EUR 30,000.00 per employee concerned, without prejudice to our right to claim compensation for damages in excess where applicable. This clause shall also apply equally if the Customer avails of the services of an ASSYST EUROPE employee without officially hiring him and the latter invoices his services himself, or indirectly, without passing via ASSYST EUROPE.

#### **ART. 20. LAW AND JURISDICTION**

20.1 The invalidity of any clause or part of a clause of these terms and conditions shall not affect the other clauses or parts of clauses, and the clause or part of clause concerned shall wherever possible be replaced by a valid clause of equivalent effect.

20.2 The contract is subject to Belgian law.

20.3 Any dispute concerning the existence, implementation, termination or interpretation of contracts and purchase orders entered into by ASSYST EUROPE with customers, including possible negotiations, lie within the exclusive jurisdiction of the courts of Brussels including the Justices of the Peace of the Brussels-Capital Region. This jurisdiction clause is stipulated for the exclusive benefit of ASSYST EUROPE, which may at its discretion renounce it and apply the ordinary rules of jurisdiction.

**ASSYST EUROPE sprl**

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