

# General terms and conditions of sale of computer equipment

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*APEX TIMING SASU [a simplified joint stock company with a sole shareholder] with authorised capital of €35,000, listed on the Annecy Trade and Companies Register under number 531 976 017, having its registered office at 11 route de La Salle Cran-Gevrier 74960 ANNECY (France), hereinafter the "Service Provider", publishes and markets software solutions for the management of multi-activity leisure centres and motor sports (karting), in the form of software licences installed on the customer's information system, subject to the Service Provider's General Terms and Conditions of Use and Maintenance (hereinafter the "GTCUM"). The Service Provider also markets and sells the hardware necessary to operate and manage karting centres, the sale of which is governed by these terms and conditions.*

*Any purchase of computer equipment sold by the Service Provider implies the acceptance of these General Terms and Conditions of Sale of computer equipment (hereinafter the "GTCS") by the purchaser (hereinafter the "Customer").*

*After taking cognizance of its characteristics and ensured the compatibility of the equipment with its needs and IT infrastructure, the Customer wished to order computer equipment from the Service Provider according to the terms hereof and of the Quote. Signature of the Quote by the Customer implies unconditional acceptance of these GTCS.*

## **Article 1. Definitions**

The defined terms below have the meaning as given in the following definition:

**Contract:** as formed collectively by the General Terms and Conditions of Sale (GTCS), the Quote and any appendices sent by the Service Provider, signed by the Customer and returned to the Service Provider, to the exclusion of any other document.

**Customer:** any natural or legal person that has signed a Quote with Apex Timing based on the present terms and conditions.

**Delivery:** means the physical handover of the Goods to the Customer.

**Goods:** any product or range of products, items and equipment marketed, distributed and/or sold by the Service Provider.

**Manufacturer:** means the builder and producer of the Goods sold by the Service Provider.

**Quote:** document issued by the Service Provider containing the special terms and conditions accepted by the Customer, namely the computer equipment chosen, the pricing terms and conditions, etc.

**Site:** means the site(s) for the Delivery of Goods, designated by the Customer in the Quote.

## **Article 2. Object**

The purpose of these general terms and conditions is to define the general terms and conditions applicable to the sale and delivery of computer equipment or any other Goods sold or distributed by the Service Provider and ordered by the Customer, and the arrangements for their acceptance and payment.

In the event that this sale is accompanied by a user licence for software sold by the Service Provider and/or a maintenance service on the part of the Service Provider, signature of this Contract implies the Customer's unconditional acceptance of the Service Provider's GTCUM.

### **Article 3. Contractual documents**

The Contract constitutes the entire agreement between the Parties and supersedes all previous documents concluded between them on the same subject matter. The contractual documents are presented in hierarchical order of decreasing legal value:

- (i) The Quote signed by the Customer and received by the Service Provider;
- (ii) These General Terms and Conditions of Sale (GTCS);
- (iii) Any appendices sent by the Service Provider.

In the event of contradiction, the higher ranking document takes precedence.

The signature of the Quote by the Customer implies confirmation by the Customer of its cognizance of the Service Provider's knowledge of these General Terms and Conditions of Sale (GTCS).

### **Article 4. Duration**

The Contract will enter into force on the date of signature of the Quote by the Customer and remains in force for the duration stipulated therein or, failing that, for the duration needed for the Service Provider to deliver the Goods.

In the event of multiple Quotes governed by these GTCS, each Party may terminate a quote, under the conditions set out below, without however terminating the entire Contract.

### **Article 5. Prices and financial terms**

- **Price**

In consideration of the supply of the Goods, the Customer agrees to pay the Service Provider the lump sum stipulated in the Quote. This price is stated exclusive of taxes, and any taxes and duties applicable on the invoicing date are added.

The Service Provider reserves the right to change its prices at any time but the Goods will be invoiced on the basis of the prices in force at the time of logging orders from a signed Quote returned to the Provider, subject to their availability on that date.

- **Payment terms**

The Goods are payable in cash on the date of signature of the Quote. Cash payment will not give rise to any discount. Payment at 30 days: this can only be granted with the written agreement of the Service Provider for any order amount greater than €3,000 excluding tax. Any payment by instalments (maximum of three) must be accepted by the Service Provider, and will be subject to specific terms and conditions specified in the Quote.

Other ancillary costs, including shipping and carriage of the Goods, are billed in addition, unless otherwise agreed in writing by the Parties in the Quote.

The Customer makes payments by bank transfer to the Service Provider's bank account. Payments by cheque are not accepted.

- **Late payment**

Any delay in payment will result in the Customer being charged (i) the statutory fixed charge for debt collection costs, in accordance with Article L.441-10 of the French Commercial Code, (ii) a fixed collection charge of forty euros (€40), (iii) late payment interest at a rate equal to three (3) times the legal rate in force, applied in days from the first day of lateness after the due date of the invoice until cleared payment, this penalty not being in full discharge.

Once any payment becomes thirty (30) calendar days late, the Contract will be terminated automatically with no further formality with the Customer held to be at fault, notwithstanding the Service Provider's right to claim compensation for loss or harm sustained. The Service Provider will retain all sums previously paid by the Customer.

## **Article 6. Retention of title clause**

The Goods remain the property of the Service Provider until full payment of the price stated in the invoice issued after the Service Provider has received the Quote duly signed by the Customer, and any related default interest, even if the Service Provider has accepted bills of exchange. The Goods will remain individualised; the Customer will refrain from assembling or disassembling the equipment and from replacing certain parts until full payment of the price.

During the retention of title period, the Customer will bear the cost of the risks if the Goods are lost, damaged or destroyed once they have been delivered. If the Customer enters administration or compulsory liquidation, the Service Provider may claim ownership of unpaid delivered Goods.

## **Article 7. Supply of Goods**

- **Goods**

The Service Provider undertakes to deliver to the Customer the Goods ordered as described in the Quote, in accordance with the characteristics of the Goods defined by the Manufacturer applying on the Delivery date.

In the event of a stock shortage of one or more Goods ordered by the Customer in the Quote, the Service Provider reserves the right, where possible, to substitute said Goods with others technically equivalent.

- **Delivery arrangements**

The Goods will be delivered to the Customer Site address, unless otherwise specified by Customer.

Delivery lead times given in the Quote are non-binding, and overruns cannot under any circumstances be penalised by compensation and/or lateness penalties, and the Customer expressly accepts these provisions. Late Delivery cannot serve as grounds for cancelling an order or for payment of compensation. The Service Provider will be entitled to suspend Delivery in the event of non-compliance with the payment terms or failure to produce documents necessary for fulfilment of the order.

- **Acceptance of Goods**

The Goods are accepted by the Customer at the address of the Delivery Site.

If, at the time of delivery, the original packaging is damaged, torn or opened, the Customer must check the Goods' condition. The Customer must indicate on the transport slip any irregularity concerning the Delivery (missing or broken items, damaged package, etc.) in the form of handwritten reservations together with a signature. This check is deemed carried out when the Customer, or a person authorised by the Customer, has signed the transport slip.

Any damage found during the Delivery of Goods must therefore form the subject of immediate reservations, reported by the Customer on the transport slip and confirmed to the Service Provider by email within 48 hours, at the following address: [support@apex-timing.com](mailto:support@apex-timing.com). In the absence of this express confirmation within 48 hours, the Goods will be considered irrevocably accepted by the Customer.

If moreover Goods need to be returned to the Service Provider, they must form the subject of a return request to the Service Provider within eight (8) days of Delivery.

Any claim made outside this period may not be accepted. Goods may only be accepted for return in their original condition (packaging, accessories, instructions, etc.).

- **Transfer of risk**

Notwithstanding the retention of title clause, the Goods are used at the Customer's own risk, with the Customer assuming the risks and the cost upon taking physical possession, or upon acceptance of the Goods. In this respect, the Customer is required at the time of Delivery to check the condition of the Goods delivered and to issue any

reservations to the carrier and to notify the Service Provider thereof. The lack of any reservations and/or the absence of any written information from the Service Provider renders any subsequent claim inadmissible.

The Goods may be collected from the Service Provider's head office; transfer of risk will be deemed to have occurred upon collection of the Goods.

## **Article 8. Warranty**

The Service Provider undertakes to give the Customer the benefit of any warranty relating to the Goods from which the Service Provider itself benefits from the Manufacturers, covering Goods affected by a defect. However, the Service Provider cannot be held liable for latent defects in Goods sold through it. The Customer may seek only to render the Manufacturer liable, on the basis of the information indicated on the packaging and/or instructions for use of the Goods. Upon request, the Service Provider undertakes to provide the Customer with the Manufacturer's information and contact details.

Except as otherwise provided by law, any other express or implied warranty is expressly excluded.

The shipping costs incurred by returning Goods to the Manufacturer will be borne by the Customer. The Customer undertakes to contact the Manufacturer directly and take the necessary administrative steps to return defective Goods directly to it.

The Customer is responsible for taking backups of data present on faulty hardware before Goods are returned. The Service Provider will not supply any exchange equipment.

In principle, Manufacturers' warranties do not cover:

- The replacement of consumables (batteries, bulbs, fuses, etc.).
- Improper or non-compliant use of products.
- Defects and their consequences resulting from work carried out by a third party service provider.
- Defects and their consequences related to use other than the use for which the product is intended.
- Faults and their consequences resulting from any external cause (electricity, collision, water damage, etc.)
- The entire software aspect, forming the subject of a separate service, the terms of which are set by the GTCUM.

## **Article 9. Obligations and liability**

### **• Obligations on the Service Provider**

The Service Provider undertakes to fulfil the Quote in accordance with professional practice and under a best endeavours obligation, within the limit of available stocks and characteristics of the Goods defined by the Manufacturers concerned.

Where applicable, particularly when the Quote includes an installation/operational start-up service of Goods for which the Service Provider is responsible, the Service Provider undertakes to supervise its staff so as to ensure compliance with the Customer's internal policies and procedures, provided that the Customer has in fact sent same to the Service Provider prior to any intervention.

### **• Obligations on the Customer**

The Customer undertakes to:

- actively cooperate with the Service Provider and express its needs in a precise and clear manner;
- not unduly delay any acceptance process for Goods ordered;
- give the Service Provider any necessary access to the premises and equipment for the purposes of fulfilling the Quote, particularly when a service for operational start-up of the Goods is planned;

– pay the prices agreed in the Quote in accordance with these GTCS.

## • **Liability**

The commitments incumbent upon the Service Provider in respect hereof constitute a best endeavours obligation. The Customer bears sole responsibility for ensuring the suitability of the Goods it orders to meet its needs and their compatibility with its infrastructure.

Each of the Parties will be liable in accordance with ordinary law. However, by express agreement between the Parties, the Service Provider will not incur any liability for any indirect loss or harm, whether foreseeable or otherwise, suffered by the Customer or by any third party as a result hereof, including but not limited to operating loss, loss of profit, loss of opportunity, damages and costs. The Parties are moreover each responsible for taking out the insurance policies necessary for its business activities.

Also, if the Service Provider were to be found responsible for direct loss or harm suffered by the Customer as a result hereof, the compensation the Service Provider is ordered to pay to the Customer cannot exceed the amount excluding tax received by the Service Provider in respect of the Quote in question.

The Service Provider cannot be held liable in any event for malfunctioning Goods when the malfunction is caused by the use of software or hardware not provided by the Service Provider.

Lastly, the Customer may only seek to render the Service Provider liable on the grounds of a breach under these GTCS, up to one (1) year after the occurrence of the breach in question, which the Customer expressly acknowledges and accepts.

## **Article 10. Force majeure**

The Service Provider cannot be held liable in the event that the performance of its obligations is delayed, restricted or rendered impossible owing to the occurrence of a force majeure event.

Force majeure is deemed to mean those circumstances generally accepted by established legal precedent in French courts, namely events of an unpreventable and unforeseeable nature, outside of the Parties' control, against which the Parties could not reasonably have protected themselves, and the consequences of which could not be mitigated without incurring expenditure disproportionate to the expected financial benefits.

Besides situations more generally matching the above definition, the following circumstances are expressly deemed to constitute force majeure: (i) strike action at the Parties' premises, (ii) strike action elsewhere if the effect is to prevent the Party affected by the strike from conducting its activities, (iii) blockades affecting transport systems if they have the effect of preventing performance of the obligations incumbent on a Party under the terms of the present Contract or various application contracts, (iv) the unavailability or shortfall of stock of equipment ordered from the Service Provider's suppliers, (v) inaccessibility or failure of telecommunications networks and/or servers used by the Service Provider, (vi) epidemics, health emergencies, earthquakes, storms, floods, fires, explosions, (vii) wars, whether declared or otherwise, blockades or embargoes, riots, and government restrictions or prohibitions.

The Service Provider undertakes to inform the Customer as soon as possible in the event of force majeure. The performance of the Service Provider's obligations will then be suspended on an on-going basis from the date of sending notification to the Customer until permanent cessation of the force majeure event. However, if a force majeure situation continues for more than thirty (30) calendar days from the date of sending the notification, the order and/or the Contract will be terminated immediately as of right and without formal notice, without either Party incurring any liability with regard to the other.

It is however agreed between the Parties that a case of force majeure does not make performance of the Customer's payment obligation impossible.

## **Article 11. Intellectual Property**

The Service Provider remains the sole owner of all its tools, documents, data, trademarks, logos, resources and

procedural knowledge.

In this regard, the content of its website (technical documents, house style, drawings, logos, photographs, etc.) is and remains the property of the Service Provider, being the sole holder of the intellectual property rights over this content. The Customer undertakes not to make any use of this content. Any partial or total reproduction of this content is strictly prohibited and is likely to constitute an IP infringement.

### **Article 12. Confidentiality**

Each of the Parties undertakes (i) not to disclose to any third party any information, including in particular intellectual property elements, any document, information, data, method or procedural knowledge, disclosed directly or indirectly by the other Party or of which it becomes aware under the Contract (hereinafter referred to as "Confidential Information"), (ii) to use the Confidential Information only for the performance of its respective obligations as stipulated in the Contract, (iii) to disclose Confidential Information only to persons directly involved in the fulfilment of orders, and (iv) to ensure that said persons comply with this article. This confidentiality obligation will remain in force throughout the term of the Contract and for a period of two (2) years after the effective termination date of the contractual relationship.

Confidential Information excludes any information:

- of which a Party was already in possession on the date of disclosure of the information by the other Party;
- which enters the public domain after its disclosure, without this being attributable to either Party;
- lawfully received by a Party from a third party, provided that such third party is not subject to a confidentiality obligation vis-à-vis the Party owning the information; and
- that a Party is required to disclose pursuant to laws, regulations or other legal obligations, provided that this Party informs the other Party without delay.

### **Article 13. Personal data**

The Service Provider is the data controller of the processing of the Customer's personal data carried out in respect of the management and fulfilment of orders and these GTCS.

For any information concerning the processing of personal data, please refer to the Privacy Policy available at the following address: <https://www.apex-timing.com/en/privacy-policy-c34.html>

### **Article 14. Termination**

If one of the Parties fails to perform one of its obligations under the Contract, the other Party may decide to terminate the Quote in question and/or the Contract, fifteen (15) business days after the sending of formal notice by registered letter with acknowledgement of receipt which is not acted upon.

### **Article 15. Amendments and independence of provisions**

The Service Provider reserves the right to modify this Contract at any time and without prior notice, provided it informs the Customer thereof by email. The new conditions will take effect as from the notification of this information.

In the event that one or more of the provisions of the Contract are found, for any reason, to be invalid, illegal or unenforceable for any reason whatsoever, such invalidity, illegality or unenforceability will not affect any of the other provisions of the Contract which will remain valid, applicable and enforceable. The Contract shall be interpreted as if such invalidity, illegality or article not subject to enforcement were not part of the Contract. The Parties nevertheless agree that in such an event, they will negotiate in good faith alternative provisions that will be (i) valid, enforceable and opposable and (ii) consistent with the Parties' original intent.

### **Article 16. Address for service**

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The address for service for each of the Parties for the requirements hereof is given on the first page of the Contract. All official and other notices, and more generally all correspondence to be sent by one Party to the other Party pursuant hereto must be sent to the address for the Party concerned shown on the Quote, unless an exception to this rule is expressly stipulated.

#### **Article 17. Miscellaneous provisions**

- **Assignment**

The Customer cannot assign the present Contract either partly or wholly without the Service Provider's prior permission.

- **Personnel**

Each of the Parties' personnel will remain under the hierarchical and disciplinary authority that Party in all circumstances. Each of the Parties, its capacity as employer, consequently deals with the administration, accounting and employment matters relating to its employees involved in performing the obligations stipulated herein.

- **Entire agreement clause**

The Parties also declare that the Contract constitutes the full and sole expression of their common will and that it supersedes any previous written or oral agreement.

- **Independence**

The Customer is acting in its own name and on its own behalf. It has neither the power nor the authorisation to bind the Service Provider in any way whatsoever. None of these provisions can be interpreted as creating a mandate, a subsidiary, an agent or an employee-employer relationship between the Customer and the Service Provider.

#### **Article 18. Language of the contract - Applicable law and election of jurisdiction**

This Contract is written in French. In the event that it is translated into one or more languages, the French text alone shall prevail in the event of a dispute.

By express agreement between the Parties, this Contract is governed by French law.

The Annecy Commercial Court will have exclusive jurisdiction over all disputes to which the present Contract might give rise, including as regards its validity, interpretation, performance, discontinuation or transfer, even in the event of additional applications, third party proceedings or multiple respondents.