

SMODE TECH

TERMS AND CONDITIONS OF SALE

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CHAPITRE 1 - COMMON PROVISIONS

Article 1 **PURPOSE**

The purpose of these Terms and Conditions of Sale, License and Service (hereinafter referred to as "TCS") is to define the conditions under which :

- SMODE TECH grants the Customer a right to use the Software ordered by the Customer, as well as its Evolutions;
- SMODE TECH provides the Customer with Hardware, intended to operate with the Software,
- SMODE TECH provides the Customer with services, in particular Support, Software Maintenance, training and Customization Services.

They are applicable to all orders for Hardware, Licenses and/or Services placed by the Customer with SMODE TECH.

Article 2 **DEFINITIONS**

In these Terms and Conditions, each of the expressions mentioned below shall have the meaning given in its definition, namely:

Agreement: the Agreement consists of the Order and these Terms and Conditions. In the event of a discrepancy, the provisions of the Order shall prevail over these Terms and Conditions.

Community Support: Support provided on the web by the community of SMODE Users, in particular via SMODE TECH's online support forums at <https://discord.gg/vucsytd9Ft> (or any other discord support link provided by SMODE TECH on its website or by other means) and on the Frequently Asked Questions at <https://www.Smode.io/faq> .

Corrective Maintenance (or "Maintenance"): correction of Software Errors;

Customer: the legal entity having entered into an Agreement with SMODE TECH.

Customization Services : services for customizing the Software, by adding or modifying functionalities or interfaces, to meet the Customer's specific needs.

Documentation: any document relating to the Software which describes its functions and/or how to use the Software (installation and user manuals, online help, etc.).

Error: malfunction of a Software, resulting from a functional non-compliance, reproducible by SMODE TECH, and preventing normal use of the Software.

Evolutions : Updates or Upgrades of the Software, provided by SMODE TECH under the conditions set forth in these TCS and/or in the end-user license agreement (EULA).

Hardware: computer hardware on which the Software is intended to be used, such as: PC, server (such as, for example, a media server).

Information System: all the Customer's hardware, software, applications, databases and telecommunications networks.

License: the personal, non-transferable and non-exclusive right to use the Software, granted to the Customer under these TCS, and for which the specific conditions (price, duration) are set out in the Offer.

Offer: SMODE TECH's commercial proposal describing the services provided and their price, as well as any delivery times.

Order: acceptance of the Offer by the Customer, in accordance with the terms and conditions set out in article " ENTRY INTO FORCE OF THE AGREEMENT "

Partner: any authorized distributor or reseller of the Software and related Support and Maintenance services;

Periodic License: License granted for the term specified in the Offer;

Perpetual License: License granted for the legal duration of the intellectual property rights on the Software;

Production run: actual use of the Software by the Customer in his working environment, from or via actual data entry, for the performance of an actual job.

Services: all services provided by SMODE TECH, such as Support, Corrective Maintenance, installation or configuration, consulting, training, Customization, and all other services related to the Licensed Software, performed by SMODE TECH for the Customer, in performance of an Agreement.

SMODE TECH: SAS SMODE TECH, with a share capital of 100,000 euros, registered with the RCS of Paris under the number 852538206, whose registered office is located at 9 ter rue Auguste Barbier 75011 Paris;

Software: any "SMODE" computer program published by SMODE TECH, regardless of its version (evaluation, freemium, "edition", etc.), and for which the Customer has purchased a License;

Station: individual computer workstation (PC), used or intended to be used by a single User, and on which the Software may be run.

Support: assistance services to the User, detailed in these TCS;

Update: a corrective version of the Software, involving the correction of Errors, with no new features and generally designated by a number change to the right of the second decimal place in the version number (v.3.9.2, following v.3.9.1).

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Upgrade: a version of the Software that includes a modification or enhancement to its features and is designated by a change in version number, or in the number to the right of the decimal point of the version number (e.g. v.4.0; following v. 3.9, or version 4.2 following v.4.1). Upgrades do not include separate Software products marketed by Smode Tech under a different name, even if these products are compatible with the Software.

User: a natural person, hired by Customer, and duly authorized to use the Software;

Web license : License sold exclusively on the SMODE TECH website;

Website: SMODE TECH public website (accessible at smode.io, or any other url address operated by SMODE TECH);

Article 3 **ENTRY INTO FORCE OF THE AGREEMENT**

Except for Web Licenses orders, all Orders are subject to a prior Offer. Only the prices and indications mentioned on this commercial proposal are binding, to the exclusion of prices and information given on the Website or other commercial documentation of SMODE TECH, which are given for information purposes only.

Unless otherwise specified, all Offers are valid for 15 days.

The Agreement shall enter into force upon :

- i) unconditional acceptance of the Offer by the Customer, by way of a signed Offer, or by the issue of a purchase order incorporating the elements of the Offer or referred to therein, without variation ("the Order"), **and**
- ii) Customer's payment of the down payment specified in the Offer, if any;

SMODE TECH reserves the right to refuse any Order in case of previous payment issues or litigation with the Client relating to a previous order, or if the Offer is no longer valid.

Once the Agreement is final and has entered into force, it may not be cancelled. However, in the event of unilateral cancellation of the Agreement by the Customer, for whatever reason, the down payment paid by the Customer shall be retained by SMODE TECH, and the Customer shall be liable, upon invoice, to a compensation equal to 2/3 of the amount of the Order excluding VAT (down payment being deducted). This clause is without prejudice to the provisions of CHAPITRE 2Article 2

Article 4 **TERM**

Article 4.1 **Hardware Sales**

For all sales of Hardware, the Agreement will terminate upon expiry of the contractual warranty period indicated in the : WARRANTIES section, in CHAPITRE 2Article 6.

Article 4.2 **Licenses**

Perpetual Licenses are valid for the legal duration of the intellectual property rights on the Software, to the exclusion of Upgrades.

Periodic Licenses are valid for the duration specified in the Order. Unless otherwise stipulated, these Licenses are valid for one (1) year, and are renewable only by a new Order from the Customer. However, for certain Web Licenses, the Customer may decide at any time to activate automatic renewal. These Licenses may be terminated at any time, with termination taking effect at the end of the current contractual term.

Article 4.3 **Other services**

For other Services, the Agreement is executed for the duration specified in the Order, and until complete performance of the Service.

In all cases, the Agreement terminates on the date of termination or non-renewal, for whatever reason.

Article 4.4 **Right of withdrawal (Web licenses only)**

Web Licenses consisting of the supply of digital content without physical medium, the Customer must, when downloading a Web License of the Software, irrevocably waive his/her right of withdrawal if he/she wishes to use the License before the end of the legal period of 14 days provided for in Article L.221-18 of the French Consumer Code. The Customer must tick the box provided for this purpose on the Website, indicating that he loses his right of withdrawal and requests the immediate supply of the Software. In accordance with article L.221-28 13°) of the French Consumer Code, written confirmation of this waiver will be sent by e-mail. In the absence of a waiver, the Web License will only be activated at the end of the legal 14-day period.

These provisions are only applicable to Customers who may qualify as consumers in accordance with the French Consumer Code, i.e. natural persons acting for private and non-professional purposes.

Article 5 : **ACCEPTANCE AND MODIFICATION OF THE TERMS AND CONDITIONS**

In accordance with article L 441-1 of the French Commercial Code, these terms and conditions of sale constitute the sole basis of the commercial relationship between the parties.

In the absence of any special written stipulation on the Offer, derogating in whole or in part from these Terms and Conditions, any acceptance by the Customer of an Offer from SMODE TECH shall imply full and complete acceptance by the Customer of these Terms and Conditions to the exclusion of any other documents issued by the Customer.

SMODE TECH reserves the right to amend these Terms and Conditions at any time.

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These amendments will be applicable to current Agreements (or Orders), at the end of a period of thirty (30) days, from the date the amendments are sent to the Customer by e-mail, during which the Customer may refuse the said modifications, if they have an impact on current Agreements. If the Customer refuses these amendments, he may terminate the Agreement by sending a registered letter with acknowledgement of receipt to SMODE TECH during the notice period. In this case, the provisions of Article 20 CONSEQUENCES OF TERMINATION OF THE AGREEMENT will apply.

Article 6 **PRE-CONTRACTUAL INFORMATION**

The Customer acknowledges having had access, no later than the date of signature of the Agreement, to all necessary information from SMODE TECH enabling him to fully assess the content and nature of the Hardware, License and/or Services ordered and their suitability to his specific needs.

Specifically, the Customer acknowledges he had the opportunity to test the features of the Software, by subscribing to an Evaluation License, or a Free License of the Software, available on the Website.

Article 7 **CUSTOMER COMMITMENTS**

The Customer undertakes to collaborate actively in the proper performance of the Services by transmitting to SMODE TECH, on time, accurate and sincere information and all the data and documents necessary for the performance of the project and to comply with the deadlines stipulated in the Agreement. He will point out any elements that he considers likely to compromise the proper performance of the Services. He commits to inform SMODE TECH of any change relating to the data supplied. He will be solely responsible for any Errors that may result from inaccurate information.

If the Services ordered by the Customer are to be performed from the Customer's premises and/or with the Customer's Hardware, the latter shall ensure free access for SMODE TECH to its premises and/or its Hardware and provide it with the working resources strictly necessary for the proper performance of the Services.

For all Services requiring it, and in particular for any Customization project, the Customer shall designate a person able to answer SMODE TECH's functional and/or technical questions, who shall be SMODE TECH's point of contact, to monitor the advancement of the project and the use of the Software, following delivery of the Developments (hereinafter "the Project Manager"). If the Project Manager is not the Customer's legal representative, he/she must have the authority to bind the Customer with respect to decisions taken throughout the performance of the Service.

If the Project Manager were to be absent for more than 8 days, the Customer will appoint a replacement personnel

as soon as possible, so as not to penalize the advancement of the project.

Unless the Customer decides otherwise, this person will also be SMODE TECH's sole contact for Support and Corrective Maintenance.

Article 8 **SMODE TECH COMMITMENTS**

SMODE TECH undertakes to allocate the time and the human, material and technical resources necessary for the performance of the Services ordered by the Customer and to perform them in a professional manner and in accordance with highest standards; subject to the proper performance by the Customer of its own obligations.

SMODE TECH also undertakes to keep the Customer regularly informed of the progress of the Order, as well as of any difficulties he may encounter in its performance, and of the consequences thereof, especially in terms of lead time and/or costs incurred.

For Customization Services, SMODE TECH will appoint a Project Manager with the same prerogatives and role as the Customer's one.

Article 9 : **LIABILITY - INSURANCE**

Unless otherwise stipulated in these Terms and Conditions, it is expressly agreed between the parties that SMODE TECH is only bound to perform the Services on a reasonable efforts basis.

SMODE TECH shall not be liable for any indirect damage that the Customer may suffer, such as, in particular, commercial prejudice, loss of profit, damage to brand image, loss of data, which may result from the performance of Orders, their defaulting performance, or their total or partial non-performance; or from the use of the Software, the inability to use it, or the use of the results generated by the Software. Any action brought against the Customer by a third party constitutes indirect damage.

Notwithstanding the foregoing, it is expressly agreed between the parties that SMODE TECH's liability, shall be capped to the total amount paid by the Customer under the Agreement in the twelve (12) months preceding the Customer's first claim, whether amicable or judicial; and this even in the event of termination or cancellation of the Agreement.

In the event that the above liability limit were to be held void or unenforceable by a court having jurisdiction, SMODE TECH's liability shall be limited to the amount of its professional liability insurance coverage in respect of the damage covered thereby, and subject to SMODE TECH's insurer having expressly confirmed its warranty.

SMODE TECH holds an insurance policy covering its professional civil liability. SMODE TECH undertakes to maintain this coverage for the entire duration of the

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Agreement and to provide evidence of such insurance at Customer's request.

Article 10 **FINANCIAL TERMS**

Article 10.1 **Prices**

The prices of Hardware and Services are specified in the Offer. They are expressed in euros, net and exclusive of all taxes and duties.

They are valid for the entire duration of the Agreement.

Article 10.2 **Pricing of Services**

10.2.1 **Flat rate pricing**

Unless otherwise specified, Services are invoiced on the basis of a flat rate, valid for the Service or for the duration of the License, as the case may be.

10.2.2 **Time-based pricing**

Where this is provided for in the Offer, or in the event of an urgent request from the Customer which does not enable SMODE TECH to issue a prior Offer, or yet in case of a current business relationship, the Services may be invoiced on a time-spent basis, based on the time actually spent by SMODE TECH and the hourly rate in force on the day of the Service, which the Customer expressly accepts. The invoice will detail the time spent by each member of the SMODE TECH team on the requested Service, and the hourly or daily rate applied. Unless otherwise specified in the Offer, SMODE TECH's daily rate is 1650€HT (for on-site intervention) and 1300€HT (for remote intervention) (rates as of 01/10/2023), excluding travel and accommodation expenses.

This article does not create any obligation for SMODE TECH to perform a Service for which no prior Order has been placed by the Customer. SMODE TECH reserves the right to refuse the Customer's request for Services, in particular if it does not have the necessary resources at the date of the request.

Article 10.3 **Price escalation - revision**

10.3.1 **Escalation**

For periodic Services (e.g. Maintenance), as well as for Periodic Licenses, the price indicated in the Offer is valid for the initial annual period. In the event of renewal of the Agreement, the price will be automatically revised according to the variation in the Syntec index based on the formula :

$P_n = P_{n-1} (S_n/S_{n-1})$, where :

- P_n = price for the new year
- P_{n-1} = price previously applicable
- S_n = latest Syntec index published on January 1
- S_{n-1} = Syntec index used to fix P_{n-1}

10.3.2 **Revision**

SMODE TECH may, upon expiry or renewal of the Agreement, decide to increase the price applicable to the Service by more than the Syntec index, subject to a thirty (30) days written notice.

In the cases referred to in this Article 10.3, the Customer shall have the option of refusing this modification and terminating the Agreement, by sending SMODE TECH a registered letter with acknowledgement of receipt to this effect within the thirty (30) days written notice period.

If the Agreement is not terminated within the said period, the price changes will automatically apply to the current Agreement.

In the event of termination, the provisions of article " CONSEQUENCES OF TERMINATION OF THE AGREEMENT" shall apply.

Article 10.4 **Invoicing**

Invoicing conditions for Services and Hardware Orders are specified in the Order or, by default, in the specific conditions set out in these TCS.

Invoices are sent electronically, but the customer may request paper invoices at no extra charge.

Article 10.5 **Payment**

Unless otherwise stipulated in the Order, SMODE TECH invoices are payable within 30 days.

Payment is made by bank transfer or direct debit, being specified that all bank charges (including rejection fees) charged by a financial intermediary or paid by SMODE TECH are to be borne by the Customer, who must take them into account at the time of payment.

In the event of late payment in full or in part, for any reason whatsoever, a late payment fee will be applied at the conventional rate of 5% per month from the due date, without the need for a reminder, in accordance with article L441-6 of the French Commercial Code. In addition, the customer will be charged a flat fee for collection costs of €40. However, in the event that collection costs exceed €40, SMODE TECH may request additional compensation, upon justification.

Invoices must be challenged within a maximum period of twelve (12) months, on pain of foreclosure. If no claim has been raised within that period, the invoice will be deemed accepted.

The provisions of article 1223 of the French Civil Code are expressly excluded.

Article 11 **PLACE OF PERFORMANCE**

Unless otherwise stipulated in the Order, the Services shall be performed by SMODE TECH on its premises.

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In the event that the Services are performed on the Customer's premises, the Customer undertakes to inform SMODE TECH of the provisions of its internal regulations, as well as of the health and safety rules applicable in the workplace, which SMODE TECH personnel will comply with. All SMODE TECH personnel assigned in whole or in part to the performance of the Services remain, in all circumstances, under the sole hierarchical and disciplinary authority of SMODE TECH, which alone is responsible for their administrative and social management.

Article 12 **CONFIDENTIALITY**

The Parties undertake not to disclose any confidential information of the other party of which they may have become aware under the performance of SMODE TECH's services and/or for the implementation of the Agreement. Therefore, the Parties undertake to strictly respect this confidentiality and not to communicate to anyone any non-public information of which they may become aware, both during the term of the agreement and after its expiration. In particular, the Customer shall refrain from communicating to any third party whatsoever, all or part of the information gathered on SMODE TECH's solutions and services, and SMODE TECH shall refrain from disclosing the Customer's confidential information and from making any use thereof other than that which is strictly necessary for the performance of the services provided to the Customer. In particular, the terms and conditions of the relationship between SMODE TECH and the Customer are confidential.

Information which is publicly available at the time of disclosure or which subsequently becomes available without a breach by either Party of its obligation of confidentiality or which is legitimately obtained from a third party without a breach by the latter of a confidentiality agreement relating to such information shall not be considered confidential.

Article 13 **NO SOLICITING**

The Customer shall refrain, for the entire duration of the Agreement and for a period of one (1) year from the termination of the Agreement, whatever its cause, from soliciting, hiring, or having employed, directly or indirectly, any employee, or former employee of SMODE TECH (which was his employee during the period of performance of the Agreement), whether or not he has taken part in the performance of the Agreement.

In case of a breach of the above commitment, the Customer shall pay SMODE TECH compensation equal to one year's gross salary (including employer's contributions) of the employee concerned.

Article 14 **SUBCONTRACTING**

SMODE TECH is entitled to subcontract all or part of the Services to any third party of its choice. In all cases, SMODE

TECH shall remain solely liable to the Customer for the performance of the Services.

Article 15 **MUTUAL COOPERATION**

The Parties acknowledge that the proper performance of the Agreement depends essentially on their mutual cooperation in good faith. Consequently, each of the Parties undertakes, in all circumstances, to cooperate as effectively as possible with the other Parties and, in particular, in the event of any difficulty in the performance of the Agreement, to seek, in good faith, solutions consistent with the mutual interests of the Parties.

Article 16 **BUSINESS REFERENCE**

By accepting these Terms and Conditions and for the duration of the Agreement, the Customer expressly authorizes SMODE TECH to refer to it as a customer, and to reproduce on its website and its commercial documents the logo or trademark which the Customer will have communicated to SMODE TECH, in order to ensure this reproduction complies with the Customer's corporate identity.

Article 17 **FORCE MAJEURE**

The performance of the Parties' obligations shall be suspended by the occurrence of an event constituting force majeure in accordance with article 1218 of the French Civil Code, and the case law of the French courts. By express agreement, the following are considered to be cases of force majeure: acts of terrorism, fire, explosion, laws or decrees incompatible with the performance of the Agreement, epidemics or pandemics declared as such by national or international health authorities, interruption of electrical, Internet or telecommunications networks, death of a key person of SMODE TECH such as its legal or de facto manager, or its technical director, until such time as he/she is effectively replaced. In such a case, the party affected by the force majeure shall promptly inform the other party in writing of its duration and foreseeable consequences. If the case of force majeure exceeds sixty (60) days from the notification referred to above, the party affected shall have the right to terminate the Agreement as of law and without compensation, with no other formality than sending the other party a registered letter with acknowledgement of receipt.

Article 18 : **ASSIGNMENT**

The Agreement may not be assigned or transferred by the Customer to a third party without the prior written consent of SMODE TECH. However, SMODE TECH may assign its rights and obligations under the Agreement at any time, subject to informing the Customer. In such a case, and notwithstanding Article 1216-1 of the French Civil Code, SMODE TECH shall be released from all obligations related to the Agreement, both in respect of the obligations

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performed and the obligations related to the future performance of the Agreement by the assignee.

Article 19 **TERMINATION FOR CAUSE**

In the event of a breach by either party of its obligations under the Agreement, and in particular in the event of :

- non-payment or failure of the Customer to cooperate on the performance of the Order ,
- failure to deliver or delivery of the Hardware after the 60-day period provided for in CHAPITRE 2 Article 3
- total or partial non-performance of the Services by SMODE TECH, not justified by a breach by the Customer or otherwise remedied by the application of a penalty clause;
- breach of confidentiality, or no-soliciting clauses, and if this party fails to remedy the breach within one (1) month of formal notice sent by registered letter with acknowledgement of receipt, the non-breaching party may terminate the Agreement by registered letter with acknowledgement of receipt.

Furthermore, in the event of early termination for Customer's breach of its obligations, SMODE TECH reserves the right to charge the Customer a penalty fee set at 10% of the pre-tax price of the amount of the remaining sums to be paid, without prejudice to any damages that SMODE TECH may claim in addition as compensation for the loss suffered.

Article 20 **CONSEQUENCES OF TERMINATION**

In the event of termination of the Agreement for any reason whatsoever, the Customer shall:

- immediately cease using any Software, except any Software on which he has purchased a Perpetual License (unless such License has not been paid);
- ☐ In case of subscription of a free license (Free License, Evaluation License), it must be returned with its physical support (dongle), if it has been provided by SMODE TECH ;
- pay within ten (10) days all sums due to SMODE TECH.

Upon termination of the Agreement, for any reason whatsoever, any License or Maintenance fees paid for the current contract period will be non-refundable.

At the end of the Agreement, SMODE TECH will return to the Customer or destroy all elements or documents belonging to the Customer and of which SMODE TECH may have had access during the performance of the Services, and agrees not to retain any copy thereof.

Article 21 **SEVERABILITY**

If any provision of this Agreement was held to be invalid, illegal, or unenforceable, then, to the extent permitted by law, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

Article 22 **SEPARATE AGREEMENTS**

In the event that the Customer has executed several separate Agreements with SMODE TECH, these shall be deemed to be expressly divisible.

Consequently, the termination for any reason whatsoever, of one of these Agreements shall not entail the termination, of the other Agreements, which shall remain in force until their respective terms.

Article 23 : **ENTIRE AGREEMENT**

The Agreement constitutes the entire agreement between the parties with respect to its subject matter. It supersedes all oral and written agreements made prior to its signature and which may relate to it.

Article 24 **NO WAIVER**

Any one or more failure by either party to enforce any provision of this Agreement or to exercise any right shall in no way constitute a waiver of such right or remedy on any future occasion..

Article 25 **APPLICABLE LAW – DISPUTE SETTLEMENT**

These terms and conditions are governed by French law.

The Parties agree to make their best efforts to settle amicably all disputes arising from the conclusion, interpretation, performance or termination of an Order, whatever the cause thereof. As soon as a dispute arises, the Parties shall meet within one month of notification of the dispute by one of the Parties to the other Party by registered letter with acknowledgement of receipt. The settlement meeting must be attended by at least one representative of each Party. In the absence of an amicable agreement within one month of the settlement meeting, each Party will recover its full and complete freedom of action.

IN THE ABSENCE OF ANY SETTLEMENT AGREEMENT UNDER THE CONDITIONS SET OUT IN THE PRECEDING PARAGRAPH, ANY DISPUTE BETWEEN THE PARTIES RELATING TO THE CONCLUSION, INTERPRETATION, EXECUTION OR TERMINATION OF AN ORDER SUBJECT TO THESE TERMS AND CONDITIONS, FOR WHATEVER REASON, AS WELL AS ANY CONSEQUENCES WHICH MAY RESULT THEREFROM, SHALL BE SUBMITTED TO THE EXCLUSIVE JURISDICTION OF THE COMMERCIAL COURT OF PARIS (INTERNATIONAL CHAMBER), NOTWITHSTANDING THE INTRODUCTION OF THIRD PARTIES OR THE PLURALITY OF DEFENDANTS, INCLUDING IN THE CASE OF EMERGENCY OR CONSERVATORY PROCEEDINGS, OR ON APPEAL.

CHAPITRE 2 TERMS AND CONDITIONS FOR THE SALE OF HARDWARE

The provisions below apply to the sale by SMODE TECH of Hardware dedicated to the use of the Software.

Article 1 **PRE-CONTRACTUAL INFORMATION**

The Customer acknowledges that, prior to placing his Order, he/she has been provided, in a clear and comprehensible manner, with all information likely to inform his/her purchasing decision, and in particular with the technical characteristics of the Hardware ordered, in order to assess the compliance of the Hardware ordered with his/her needs, both in terms of technical performance, volume and intensity of use, and the suitability of the Hardware with his/her Information System.

The Customer acknowledges having read and understood the hardware requirements necessary for the Software to run properly, which are available at <https://www.smode.io/en/faq>.

As a consequence, the Customer acknowledges that SMODE TECH has fulfilled its pre-contractual duty of disclosure and its duty of care, and waives any claim or cause of action thereon.

Article 2 **PRICES -TERMS OF PAYMENT**

Hardware prices are set on the Order. They are expressed in Euros, exclusive of tax and VAT; **excluding delivery charges and eco-contribution, payable on top.**

Unless otherwise stipulated in the Order, the following terms of payment apply:

- 40% down payment on order,
- The balance on delivery.

For orders to be delivered outside France, full payment will be required before shipment.

In the event of cancellation of the order by the Customer after its acceptance by SMODE TECH less than 15 days before the date scheduled for the supply of the ordered Hardware, for any reason whatsoever other than force majeure, the down payment paid by the Customer shall be retained by SMODE TECH and will not be refunded. The provisions of article ENTRY INTO FORCE of the agreement remain applicable.

Article 3 **DELIVERY TIMES**

SMODE TECH will use its best efforts to deliver the Hardware ordered by the Customer within the delivery times agreed between the Parties and stipulated on the Order. Such delivery times are not binding on SMODE TECH, as they depend in particular on its suppliers' own delivery times, which may be affected by variations in worldwide demand for the type of Hardware ordered. Consequently, SMODE TECH may not be held liable to the Customer for

any delay in delivery, unless such delay exceeds 60 days and is exclusively attributable to SMODE TECH.

In the event the delivery were more than 60 days overdue, the Customer may request cancellation of the Order, without this cancellation entitling the Customer to compensation. Any advance payments already made will then be refunded. SMODE TECH undertakes to keep the Customer informed of the progress of its Order, and of any supply difficulties it may encounter, so that the Customer may make a prompt and informed decision at the end of the aforementioned period.

Under no circumstances may SMODE TECH be held liable in the event of delay or suspension of delivery attributable to the Customer or in the event of force majeure.

Article 4 **DELIVERY**

Unless otherwise specified in the Order, Hardware are delivered DDP (Delivery Duty Paid - Incoterms 2020), to the place of delivery indicated in the Order. Any customs duties and delivery charges are invoiced to the Customer prior to shipment.

Delivery takes place upon the transfer to the Customer of physical possession or control of the Hardware, at the address indicated in the Order. In the event of a change in the place of delivery after the Order has been placed, or in the event of special requests by the Customer relating to the conditions of packaging or transport of the Hardware ordered, duly accepted in writing by SMODE TECH, the costs relating to such modifications shall be borne by the Customer.

The Customer shall verify, upon delivery, the condition of the Hardware delivered. **The Customer must give notice to SMODE TECH in writing (by recorded delivery letter or by e-mail confirmed by recorded delivery letter) of any reservations or claims for non-compliance or visible defects in the Materials delivered** (e.g., damaged package, already opened, etc.), **within a maximum period of 3 working days from delivery**, and provide to this end all relevant supporting documents (photos). Once this period has ended and if no objection or reservation has been raised, the Hardware shall be deemed to be compliant and free of any visible defect, and no claim will be accepted by SMODE TECH. SMODE TECH shall replace, as soon as possible and at its own expense, the Hardware delivered whose noncompliance or visible defect has been duly evidenced by the Customer.

Article 5 **RETENTION OF TITLE - TRANSFER OF RISKS**

IN ACCORDANCE WITH ARTICLE L 624-16 OF THE FRENCH COMMERCIAL CODE, THE HARDWARE DELIVERED REMAINS THE PROPERTY OF SMODE TECH UNTIL FULL PAYMENT OF THE PRICE BY THE CUSTOMER. IN THE EVENT OF NON-PAYMENT OF THE FULL AMOUNT DUE BY THE CUSTOMER,

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AND AFTER THE EXPIRY OF A PERIOD OF 8 DAYS FOLLOWING THE SENDING BY SMODE TECH OF AN UNSUCCESSFUL FORMAL NOTICE BY REGISTERED LETTER THE AGREEMENT SHALL BE TERMINATED AS OF LAW, AND SMODE TECH MAY CLAIM OWNERSHIP OF THE HARDWARE SOLD, IN ACCORDANCE WITH THE CONDITIONS SET OUT IN ARTICLES L.624-9 ET SEQ. OF THE FRENCH COMMERCIAL CODE.

These provisions do not prevent the transfer to the Customer, upon delivery, of the risks of loss or deterioration of the Hardware.

Article 6 : **WARRANTIES**

Article 6.1 Scope of the warranty

The Hardware delivered is sold with the manufacturer's contractual warranty (and any extension thereof) for the period specified in the Order, covering any defects in design, material or workmanship. As of the date hereof, and for information only, this warranty is for three years parts and labor. If any Hardware is found to be defective during the warranty period, the Customer may obtain, at the manufacturer's discretion and depending on the seriousness of the defect, either repair or replacement of the defective Hardware. Consumables such as batteries and accessories are warranted no longer than one year, and may not be included in any extended warranty.

Article 6.2 Warranty procedure

The warranty must be exercised with the manufacturer of the Hardware, with the assistance of SMODE TECH. In the event of a defect or malfunction of the Hardware during the warranty period, the Customer must inform SMODE TECH by email. Thereafter, if required by the manufacturer's warranty procedure, SMODE TECH will put the manufacturer's after-sales service directly in touch with the Customer, so that it can analyze the defect and carry out any necessary on-site or remote intervention. In all other cases, SMODE TECH may, on behalf of the manufacturer, analyze the malfunction and provide the manufacturer with all information necessary for the after-sales service to intervene on the Customer's site or remotely, or to replace the Hardware. SMODE TECH will not itself intervene on the defective Hardware, except with the prior agreement of the manufacturer. Unless specifically agreed otherwise by the manufacturer, the costs and risks of returning repaired or replacement Hardware under warranty shall be borne by the Customer, and are not included in the warranty.

Interventions under the warranty will not result in an extension of the warranty period. The Customer shall not have the Hardware repaired or modified by a third party without the prior written authorization of either SMODE TECH or the manufacturer.

Article 6.3 Exclusions

The warranty is excluded if the defects or malfunctions are due to incorrect installation, inadequate maintenance, replacement of a consumable by disassembly of the Hardware, carried out directly by the Customer without following the instructions in the user manual or by an unauthorized third party; a modification not authorized by SMODE TECH, abnormal use or use that does not comply with the user manual, an accident, a shock, a fall or lack of supervision. Consumables such as batteries and accessories are covered by a maximum warranty of one year and may not be included in any extended warranty.

CHAPITRE 3 SPECIFIC CONDITIONS FOR MAINTENANCE AND SUPPORT

Article 1 SCOPE OF APPLICATION

The provisions of this Chapter shall apply to Corrective Maintenance and Upgrades of the Software, as well as to Support Services provided by SMODE TECH under an Agreement, or included in a License purchased by the Customer.

Article 2 DEFINITIONS

Minor Error: any error that does not prevent full use of the Software's features, even if this is achieved by means of a workaround procedure.

Major Error: any error that makes it impossible to use or operate all or part of the Software's features.

Article 3 GENERAL OBLIGATIONS

Unless otherwise specified in the Agreement, the Maintenance agreement shall enter into force on the date the Software runs into production. It will remain in force for an annual period, subject to payment of a flat fee.

SMODE TECH will provide Corrective Maintenance and Support services in accordance with the procedure set out in Article 4.

SMODE TECH shall not be liable for any late response to a Support or Maintenance request, or for its inability to resolve an Error notified by the Customer, provided it has made all reasonable efforts to fix the Error.

Article 4 SCOPE OF SERVICES

Article 4.1 Corrective Maintenance

Corrective Maintenance consists of resolving Errors in any Software for which the Customer has a valid License.

Except for Web Licenses, subscribed Licenses include the distribution of Updates (corrective versions) of the Software to the Customer (excluding Upgrades).

As part of Corrective Maintenance, the Customer may be asked to download Updates of the Software from the download site operated by SMODE. SMODE TECH shall not be held in breach of its obligations under Corrective Maintenance if the Customer fails to install the latest Updates of the Software.

The following services are specifically excluded from the Corrective Maintenance Service and will be charged to the Customer, after a feasibility assessment and prior estimate by SMODE TECH:

- Any intervention by SMODE TECH teams on Customer's site;

- Installation or troubleshooting of hardware, operating system or third-party software used by the customer;
- Software installation and assistance ;
- Services associated with the deployment of Upgrades, ;
- Restoring lost Customer Data;
- Troubleshooting system and network problems;
- Customer data conversion

In the event of an urgent intervention, these Services will be invoiced on a time-spent basis, based on the hourly rate in force on the day of the intervention.

Article 4.2 Upgrades

As part of the Maintenance Services, SMODE TECH will distribute the Upgrades of the Software to the Customer as and when they become available.

These Evolutions will be available for download on the SMODE TECH Website.

The Customer agrees to install Upgrades on the Stations when available, by downloading them using the link that will be sent by SMODE TECH.

The Customer will be given sufficient notice of the deployment of any Update or Upgrade that involves a change in the technical environment.

SMODE TECH is not bound to any frequency of delivery of such Upgrades.

Article 4.3 User Support

Except if he subscribed to Web Licenses with Community Support, the Customer may contact SMODE TECH's Support services, as indicated in the SUPPORT PROCEDURE section, in order to benefit from personalized assistance in the use of the Software; and this within the limits of use of the Service provided on the Website.

In addition, any Customer may access Community Support (including SMODE TECH's online support forums at <https://discord.gg/vucsytd9Ft> (or any other discord support link provided by SMODE TECH on its website or by other means) and Frequently Asked Questions at <https://www.Smode.io/faq> .

Under no circumstances shall the assistance provided for in this article replace the training SMODE TECH may provide for the use of the Software.

Article 5 : SUPPORT PROCEDURE

Support and Corrective Maintenance requests must be sent exclusively via the SMODE TECH technical platform, or by e-mail to support@smode.io . Requests must be collected and addressed solely by the Customer's Project Manager specified in CHAPITRE 1Article 7

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Requests are received and processed from Monday to Friday, from 9am to 5pm (Paris time), except on public holidays and when the company is closed. They will be ranked and processed by SMODE TECH according to their degree of urgency.

Article 6 : **PROCESSING TIMES**

SMODE TECH will handle Customer's requests for Support and Maintenance as quickly as possible, depending on the resources available at the time of the request.

SMODE TECH will make its best efforts to correct the Errors identified by its technical team, within deadlines compatible with the seriousness or recurrence of the Error.

SMODE TECH may, at its discretion, provide workarounds, correct Minor errors by sending patches, or take control of User workstations.

Given the technical nature of the Software, and the rapid evolution of technologies, SMODE TECH will act on a best effort basis, and shall not be bound by any deadline for the resolution of Errors.

Article 7 **EXCLUSIONS**

SMODE TECH is released from any liability with respect to its Maintenance and Support obligation for Errors resulting from:

- Unsuitability of User Station specifications, in particular insufficient memory drive, disk space or any other computer peripheral required for the Software to run properly, and in general for failure to comply with any technical or software requirements or incompatibilities as specified on the Website (the hypertext link appearing in the Offer).
- third-party software;
- A breakdown or problem resulting from any intervention or manipulation of the Software by the Customer and/or a third party;
- Unsuitability of the customer's Internet connection;
- Failure to update the antivirus or firewall of the Customer's Information System, or of User workstations;
- In general, any intervention by a third party, not authorized by SMODE TECH, on the Software.

Article 8 **FINANCIAL TERMS**

In consideration for the Maintenance Services provided under this Chapter, the Customer shall pay an annual fee, which amount is specified in the Order.

Maintenance Services are invoiced annually, in advance. In the event of renewal, SMODE TECH will issue an invoice at the beginning of each renewal period.

Maintenance is applicable to only one License at a time. Consequently, Maintenance subscribed for one License may not be applied to another License if the Customer fails to pay the related fee.

For Periodic Licenses, the Maintenance Service is included in the annual License fee.

For Perpetual Licenses, the Maintenance Service is included for the first year. If the Customer wishes to continue to benefit from Maintenance beyond the first year, he/she must subscribe to a Maintenance agreement and pay the related fee.

CHAPITRE 4 CONDITIONS APPLICABLE TO SOFTWARE LICENSES

Article 1 TYPE OF LICENSE

The Customer may subscribe to one of the following Licenses, for each copy of the Software:

- An evaluation license, for a limited period,
- A free license
- A Perpetual License,
- A Periodical License.

The purpose of this Chapter is to determine the Customer's rights of use for each type of License. **It supplements, where applicable, the provisions of the End User License Agreement (EULA), which remains applicable in all cases, and must be accepted by the Customer when installing the Software.** In the event of any discrepancy between the terms of the EULA and those of these TCS, the latter shall prevail.

Article 2 SOFTWARE DELIVERY AND INSTALLATION

Smode Tech (or its Partner) will deliver the Software and Documentation by making them available for download in electronic form. Smode Tech or its Partner will provide electronic passwords, license keys or other activation mechanisms if required (such as the Wibu Codemeter Dongle to generate and execute a license key), necessary to enable licensed use of the Software. Delivery is deemed to be effective on the date on which the copy of the Software and the license keys are made available to the Customer. The Customer may also make a single copy of the Software installation program, exclusively for backup purposes, provided that he does not install and run this backup copy. The Customer may install the number of copies of the Software corresponding to the number of Licenses subscribed, and for which license fees are due, each on a single Station intended for the use of a single User.

Installation of the Software is the sole responsibility of the Customer, except in cases where the Customer has ordered a separate installation service for the Software on its Stations and Hardware.

Article 3 : LICENSED RIGHTS

Article 3.1 Evaluation license

For certain specific projects, and after studying the Customer's request, SMODE may grant the Customer an Evaluation License. The Customer who has downloaded the Software on an evaluation basis is authorized to access and

use the Software free of charge and for non-commercial purposes, solely for a limited evaluation period, agreed with the Customer, which runs from the installation of the copy of the Software on the User Station (the "**Evaluation Period**"). Unless a Perpetual or Periodic License is purchased for the Software, the copy of the Software will be disabled and, in any event, the right to use the Software will automatically expire at the end of the Evaluation Period. The Evaluation License is limited to the use of the Software internally, solely for the purpose of testing the Software in an evaluation environment. Any other use of the Software during the Evaluation Period is expressly prohibited. Software supplied for evaluation purposes may be supplied with certain features disabled. Conversion of an evaluation license to a Perpetual or Periodic license may be effective only upon payment of the applicable license fee and delivery of a license key by SMODE TECH. Any attempt to circumvent the protections applicable to the Evaluation License, as well as any use of the Software beyond the Evaluation Period, or unauthorized removal of the Software's limitations, will constitute an act of infringement in accordance with Article L.335-3 of the French Intellectual Property Code.

Article 3.2 Free License

The Customer may download a free version of the Software ("Smode Community") from the Website. This license is perpetual, as indicated in section Article 3.4 and differs from an evaluation license in that it offers limited features of the Software. **The rights granted to the Customer under a Free License are strictly limited to non-professional, non-commercial, personal or academic purposes.** Any unauthorized use of a Free License shall be deemed an act of infringement of SMODE TECH's intellectual property rights in the Software, for which the Customer shall be held liable.

Article 3.3 Common provisions to Perpetual and Periodic Licenses

In case of subscription of a paid License, SMODE TECH grants the Customer, who accepts it, a personal, non-transferable, and non-exclusive right to use the Software, including its documentation in accordance with its purpose, for its own needs exclusively. The Software may only be used by a single User; any use by several simultaneous Users being technically impossible and strictly prohibited.

All licenses are granted worldwide.

Article 3.4 Perpetual License

The right to use the Software is granted to the Customer for the legal duration of the intellectual property rights applicable to the version of the Software licensed.

No right of use is granted for Software Evolutions. Notwithstanding the foregoing, and in application of the Upgrades section, the Customer will be granted all the

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rights above, on the Software Evolutions (Updates and Upgrades) for a period of 12 months following the subscription of a Perpetual License.

Article 3.5 Periodic License

In the event of subscription to a Periodic License, the rights of use provided for in this Chapter are granted for the duration specified in the Order. The Periodic License may only be renewed by the issue of a new Order, and payment of the relevant fee (except for automatically renewing Web Licenses). If not renewed at the end of the License term, the License will be automatically disabled. The Customer may then download a Free License from the Website.

Article 4 : INTELLECTUAL PROPERTY

Article 4.1 SMODE TECH Intellectual Property Rights

SMODE TECH declares that it is vested with all rights in the licensed Software.

The subscription to a License does not result in any transfer to the Customer of intellectual property rights relating to the Software. Consequently, the Customer shall not infringe SMODE TECH's intellectual property rights, either directly or through third parties. The Customer may not delete, modify, or allow a third party to delete or modify any copyright, trademark or other intellectual property notices affixed on the Software. The Customer commits to take all necessary measures for their protection and to prevent any third party from using the Software, in whole or in part, without the prior written consent of SMODE TECH.

The Customer agrees to inform SMODE TECH as soon as possible of any infringement or unlawful use of the Software of which he is aware.

Article 4.2 License restrictions

Unless otherwise stipulated, the Customer shall not (i) translate, adapt, modify or arrange the Software, in particular with the purpose of creating and/or distributing or marketing new or derived functionalities, and/or derived or similar software (ii) copy, by any means whatsoever, the Software, except for a backup copy for security purposes (iii) make any use of the Software that does not comply with its user documentation (iv) engage in any reverse engineering operation, any creation of products derived from the Software, any disassembly or decompilation, except as provided for in the French Intellectual Property Code (v) make any use of the Software other than that authorized by SMODE TECH (vi) engage in any direct or indirect supply of the Software to a third party, in particular by rental, sub-license, assignment or loan (vii) or in any representation, distribution or marketing of the Software, whether free of charge or for a fee.

Article 5 FINANCIAL TERMS

Article 5.1 Perpetual License

In consideration for the rights of use granted to the Customer, the latter shall pay SMODE TECH a flat fee upon subscription of the License.

It is specified that payment of the license fee is a prerequisite for delivery to the Customer of the license key enabling activation of the Software.

Article 5.2 Periodic License

In consideration of the rights of use granted to the Customer, the Customer shall pay SMODE TECH an annual fee for the use of the Software.

This fee must be paid before subscription to activate the License, and before each renewal, to avoid any suspension of the Customer's rights of use, for the Customer to continue its use. SMODE TECH disclaims any liability for any damage which may result from late renewal of the License.

Article 6 WARRANTIES

Article 6.1 Software operation

SMODE TECH does not warrant that the Software will meet the Customer's specific needs. It is the Customer's responsibility to ensure that the Software is compatible with the hardware and software technical pre-requisite published by SMODE TECH in its Documentation, and available at any time at <https://www.smode.io/en/faq>.

SMODE TECH warrants that the software will perform substantially in accordance with the specifications described in the Documentation, if properly installed on the appropriate configuration.

SMODE TECH does not warrant that the operation of the Software will be uninterrupted or error-free and that all Errors will be detected or corrected. Such bugs or errors will be processed and corrected as part of the Corrective Maintenance services, under the conditions defined in the purchased License, or in any separate Maintenance agreement.

The above warranties do not apply to Errors resulting from improper installation of the Software, unauthorized modification, misuse, or operation in an environment not compatible with the requirements specified by SMODE TECH (in particular interfacing with software or hardware products other than those specified or endorsed by SMODE TECH).

Article 6.2 Infringement

SMODE TECH guarantees that it is the owner of all rights relating to the Software and that the Services will be performed without infringing on pre-existing intellectual property rights.

SMODE TECH will indemnify the Customer against all actions, claims, complaint by any person alleging any rights

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(in particular intellectual property rights) to restrict or prohibit the use of the Software or of Developments supplied by SMODE TECH under the Agreement.

This warranty is subject to the following express conditions:

- That the Customer has notified in writing, within a maximum period of one month, the action or claim, complaint or formal notice he received from the third party, except in the case of an emergency procedure, which must be notified within a maximum period of 8 (eight) working days;
- That SMODE TECH has been put in a position by the Customer to ensure the defense of its own interests and those of the Customer, subject however to the Customer's agreement, in particular with regard to the choice of lawyers responsible for its own defense, and, to this end, that the Customer has collaborated in good faith in the said defense, by providing all the elements, information and assistance reasonably necessary to carry out such a defense.

Notwithstanding the foregoing, the Customer will retain the right to defend his own interests.

Under the terms of this warranty, including in the event that the Customer decides to defend its own interests, SMODE TECH undertakes to pay all damages and other compensation (including legal, expert and procedural fees) that the Customer may be ordered to pay by a final court decision, enforceable against SMODE TECH, in relation to its use of the Software, and not subject to appeal, or the amount of the settlement fees provided for in the settlement agreement executed with the plaintiff and endorsed by SMODE TECH.

By express agreement, the warranty given by SMODE TECH under this article is limited to the liability cap indicated in the “: Liability - Insurance” section of these Terms and Conditions of Sale.

If, as a consequence of an infringement action, the court ordered a ban on the use of the Software, SMODE TECH would, at its option and at its expense:

- obtain the right for the Customer, and their customers, to continue using the Software,
- or replace it with another application that is not infringing on the plaintiff's IP rights;
- or modify the Software in such a way as to avoid said infringement.

Should SMODE TECH fail to implement one of these three actions, either Party may terminate the Agreement, and terminate the current Licenses, without notice and without any compensation other than that due by SMODE TECH under this Article.

Under no circumstances shall the existence of an action, claim or complaint as defined above authorize the Customer to terminate the Agreement or to suspend payment of fees for the use of the Software or Services, outside of the termination options provided for in these Terms and Conditions. It is specified that the existence of an action, claim or complaint as defined above shall not be considered as a breach by SMODE TECH of its contractual obligations, under the “TERMINATION FOR CAUSE” section of these Terms and Conditions.

This warranty does not apply if the legal action is based on unauthorized modification or use of the Software by the Customer, or use of the Software not provided for in this Agreement.

This article is also applicable to Customizations carried out by SMODE TECH as part of a Software customization Project.

CHAPITRE 5 CONDITIONS APPLICABLE TO OTHER SERVICES

In addition to the Software Maintenance and Support services, SMODE TECH provides installation, configuration, consulting, Customization, and training services for the Software.

The purpose of this Chapter is to define the special conditions applicable to some of these Services.

Article 1 : TRAINING

Article 1.1 Financial Terms

Unless otherwise specified in the Offer, the prices indicated do not include travel, catering or accommodation expenses for SMODE TECH's staff, which will be charged on top, where applicable.

Furthermore, as the price of the training session is calculated based on a number of participants, if the number of participants is exceeded, SMODE TECH shall review the financial terms of the training, and update the Offer accordingly. The Customer may only start (or continue) the training after having accepted the updated Offer.

Unless otherwise specified in the Offer, the following payment terms apply:

- 30% on order,
- The balance after completion of the training.

Article 1.2 Cancellation or postponement

All orders for Training Services are binding on the Customer for the date, place and price indicated in the Offer. An Order may not be cancelled by the Customer, except with the prior written consent of SMODE TECH.

However, the Training may be postponed or cancelled in any of the circumstances described in this article.

1.2.1 Cancellation for convenience

Notwithstanding the foregoing, the Customer may cancel the Training, for convenience, no later than 30 days prior to the date of the Training Session: in such a case, SMODE TECH will retain the down payment paid by the Customer to compensate for the loss of expected profit.

1.2.2 Cancellation on health grounds

In the event that one of the Training participants, a member of the Customer's staff, is unavailable for a duly justified medical reason, and that his/her participation is deemed essential for the Customer, the latter may request the cancellation or postponement of the Training to a later date, under the conditions set out below.

In the event of cancellation on this ground, the customer will be liable to pay compensation equal to :

- o 30% of the price of the Training (in the event of cancellation more than 30 days before the Training date)
- o 50% of the price of the Training (in the event of cancellation between 15 and 30 days before the Training date),
- o 100% of the price of the Training (in the event of cancellation less than 15 days before the Training date)

In the event of a postponement, which must be decided by mutual agreement between the Parties, SMODE TECH will estimate the potential additional costs implied by this postponement, and will update the Offer to be accepted by the Customer, including, as the case may be, payment of any additional down payment.

In the event that the participant concerned is a member of the SMODE TECH team, SMODE TECH will endeavor to replace him/her with a member of its staff who has the expertise required to perform the Training. If this replacement proves impossible before Training date, the Training will be postponed, at no cost to the Customer, to a later date agreed upon by mutual agreement. Alternatively, if no satisfactory rescheduling date is found, the Customer may cancel the Training, without compensation on either side. In this case, all sums paid will be refunded within 15 days.

1.2.3 Cancellation due to administrative or governmental decision

In the event that the Training should be cancelled due to an administrative or governmental decision, including any decision related to Covid-19, the Customer may, at his or her option:

- Either postpone the Training to a date mutually agreed upon by the Parties; in this case, SMODE TECH will update the Offer to be accepted by the Customer, including, as the case may be, payment of any additional down payment.
- Or cancel it: in this case, SMODE TECH may retain the down payment paid by the Customer, up to the limit of the non-recoverable costs incurred for the Service; the balance being returned to the Customer. If the Customer had not paid the down payment, he shall pay SMODE TECH a cancellation fee, equal to the amount of the costs incurred.

1.2.4 Other cases

In case of cancellation of the Training by the Customer for any other reason that those set out in this section, the full price of the Training will be charged to the Customer.

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Article 1.3 Customer commitments

The Customer commits to inform SMODE TECH of the provisions of its internal regulations, as well as of the health and safety rules applicable in the workplace, which SMODE TECH personnel will comply with. It undertakes to receive the members of SMODE TECH's staff working on the said Services in the best possible working conditions.

Article 1.4 Intellectual Property

SMODE TECH retains full ownership of all intellectual property rights to the training materials, whatever their nature (physical or digital), provided to the Customer as part of the Training.

SMODE TECH grants the Customer a personal, non-transferable right to use these materials for strictly internal, non-commercial purposes. Any distribution of these materials to third parties, or reuse of these materials during other training sessions, especially provided by third parties, is strictly forbidden.

Article 2 SOFTWARE CUSTOMIZATION SERVICES

SMODE TECH may, as part of projects, make specific developments to the Software ("the Developments"), in order to meet requests for customization (particularly of interfaces or certain features).

Article 2.1 Specifications

Each customization project (hereinafter referred to as a "Project") will be preceded by a stage of co-construction, with the Customer, of specifications based on the Customer's functional requirements ("Requirements").

Where applicable, SMODE TECH will state Functional Specifications, which will be attached to the Offer, as well as, where applicable, Technical Specifications based on these Functional Specifications. SMODE TECH commits to design and implement the Developments based on these Specifications approved by the Customer. The Specifications supplied by SMODE TECH shall replace the Customer's Requirements as soon as they have been accepted by the Customer, and shall constitute the single contractual reference for compliance.

This contractual scope excludes any function not expressly listed by the Customer in the Requirements, and which is not included in the Offer. Consequently, it is the sole responsibility of the Customer to verify the consistency and completeness of the Specifications provided by SMODE TECH in its Offer.

The Customer undertakes to comply with the agreed functional scope on the basis of which SMODE TECH has drawn up its Offer. In the event of a change in the functional scope, and whatever the cause of this change, SMODE TECH will no longer be bound by the price of the Offer, and reserves the right to re-evaluate it (in the event of an

increase in the scope) or to maintain it (in the event of a decrease in the scope).

Article 2.2 Project milestones

Unless otherwise stipulated, the Project includes the following services:

- The production of source code (coding and programming of the required software components, including scripts, applets, applications, programs, executable files, software, search engines, database management engines and multimedia components), and its executable code;
- The formatting of Content supplied by the Customer (texts, drawings, icons, images, illustrations, photos, etc.);
- Integration of the Developments into the Customer's licensed version of the Software,
- Correction of Errors within the acceptance phase;
- The release of the Software integrating these Developments, after final acceptance.

For each Development, the Customer agrees to supply the elements, i.e., content of any kind (code, text, images, sound, etc.), which may be necessary for its production.

Any other service (in particular Maintenance) must be expressly provided for in the Offer. Similarly, any modification of the initial contractual scope, such as the addition of functionalities, or a request for the insertion of applets or plug-ins not provided for in the Offer, shall result in an update of the Offer and additional costs.

Article 2.3 Delivery times

SMODE TECH shall use its best efforts to deliver a "test" version of the Software integrating the Developments within the delivery time indicated in the Offer. However, such delivery times are for information only, SMODE TECH will make all reasonable efforts to meet them.

Any request by the Customer to modify the contractual scope of the Project will result in a postponement of delivery dates, equal to the number of days required to perform the additional services, increased by thirty days to take into account the reorganization of SMODE TECH's resources.

Article 2.4 Delivery and acceptance

2.4.1 Delivery

As and when the Developments are performed and, in any event, upon their completion, SMODE TECH shall deliver the Developments by making them available to the Customer on a download site for acceptance.

2.4.2 Acceptance

Upon delivery, the Customer must test the Developments, and check their compliance with the Specifications.

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The Customer may, within a maximum period of 30 days, express any objections regarding any Errors or noncompliance observed. Objections must be precise and detailed, and sent by e-mail.

SMODE TECH shall have a period of thirty (30) days, from the date of notification, to take the necessary steps to remedy these objections or to send the Customer a substantiated reply explaining that the objections are not justified. Delivery of the corrected Developments will start a new 30-day period during which the Customer may check the correct operation and compliance of the Developments on the test environment.

The final acceptance report will be signed by both parties when all objections have been lifted, or by online validation on the test server, indicating unambiguously that all Errors have been dealt with.

However, if the Customer fails to express any objections within one of the aforementioned deadlines, and even in the absence of any acceptance report signed by the Parties, the Customer will be deemed to have accepted the Developments. Errors which the Customer has not notified in the agreed form and deadline, will be dealt with under a separate Maintenance agreement.

The absence of objections formulated by the Customer within the aforementioned deadline or within another deadline mutually agreed upon with the Customer, as well as the “go live” (Production Run) of the Software (by or at the request of the Customer) shall be deemed to constitute final and unconditional acceptance of the Developments delivered by SMODE TECH.

Article 2.5 No Warranty

The Developments are delivered without any particular warranty. Any Errors that may occur after the final acceptance will be processed by SMODE TECH as part of the Maintenance Services included, where applicable, in the License purchased by the Customer, or as part of a separate Maintenance agreement.

Article 2.6 Suspension of the Project

In the event that the Customer fails to cooperate, by failing to respond in a timely manner to SMODE TECH's requests for the proper execution of the Services, SMODE TECH may, after a final written request to the Customer to provide the requested elements within a maximum period of 30 days to which no response has been received, decide to immediately suspend the Project. This suspension will take effect on the day it is notified to the Customer, and will remain in effect until the requested elements or information are provided. To take into account the disorganization caused by the Customer's failure to meet its obligations and the subsequent suspension of the Project, the delivery dates for the Project will be postponed by a period equivalent to that of the suspension, plus thirty

days. Should the Customer fail to respond within three (3) months of notification of suspension, SMODE TECH may terminate the Order (and the Agreement) without further notice. The provisions of article CONSEQUENCES OF TERMINATION OF THE AGREEMENT shall apply. In addition, the Customer shall be liable to SMODE TECH of the outstanding price of the Service not yet invoiced at the date of termination.

Article 2.7 Intellectual Property

Unless otherwise stipulated in the Offer, SMODE TECH shall remain the owner of all Developments made under a Customization Project, and may distribute them to all of its Customers.

However, a period of exclusivity may be granted to the Customer, before the Developments are distributed and integrated into the "standard" version of the Software concerned.

The provisions of the Infringement article also apply to Developments.

Article 2.8 Financial Terms

Unless otherwise stipulated in the Order, Customization Services are invoiced as follows:

- 30% on order,
- 30% on delivery of Developments on the test environment,
- The balance on final acceptance, or on Production Run