

CAPTAINER GENERAL TERMS AND CONDITIONS OF SALE - US

1. CONDITIONS OF CONTRACT

1.1 Definitions: In these General Terms and Conditions of Sale (these "Conditions"):

"*Buyer*" means any person, company or other legal entity, that orders or buys Deliverables from Capitainer;

"*Contract*" shall have the meaning as set forth in Section 1.2 below;

"*Deliverables*" means any Products or Services supplied by Capitainer;

"*Capitainer*" means Capitainer Inc, a company incorporated in the State of Delaware and its successors and assignees;

"*Products*" means the devices supplied by Capitainer to Buyer in terms of each individual Contract;

"*Services*" means all advice given and services performed by Capitainer in connection with the Contract;

1.2 Each order from Buyer which is accepted by Capitainer shall constitute an individual legally binding contract between Capitainer and Buyer, hereinafter referred to as the "Contract".

2. CONTRACT

The Contract shall be governed in all respects by these Conditions. These Conditions shall supersede and prevail over any other terms and conditions stipulated or referred to by Buyer, and no alteration of these Conditions will bind Capitainer to or form part of any Contract, unless expressly accepted in writing by Capitainer. No previous correspondence between Buyer and Capitainer nor any promotional or sales literature regarding Deliverables (other than those expressly accepted in writing) shall form any part of or be incorporated into the Contract.

3. PRICE

3.1 The prices of the Deliverables are as stated in Capitainer's official price list or as stated in the quotation. The price list is subject to change without notice. Shipping costs are added to the invoice when Capitainer arranges for carriage. All prices are stated net of value added tax (VAT) and other applicable taxes.

3.2 All quotations given by Capitainer are for budgetary reasons only and shall not constitute a binding offer, unless executed by both parties. Deliverables are offered subject to availability. Capitainer, at its discretion, expressly reserves the right to reject any order and/or refuse to sell Deliverables to Buyer.

4. PAYMENT

4.1 Unless otherwise agreed in writing, payment in full shall be made to Capitainer in United States Dollars (USD) no later than thirty (30) days from the date of invoice.

4.2 In the event of late payment Capitainer reserves the right: (i) to suspend deliveries and/or cancel any of its outstanding obligations; and (ii) to charge interest at a rate of the greater of 2% or the maximum amount allowed by applicable law per month on the unpaid balance as calculated on a day to day basis until the clearing of payment by Capitainer's bank.

5. CHANGES

Capitainer reserves the right to make any change in the specification of any Deliverable which does not materially affect the use, performance or functionality thereof.

6. DELIVERY; INSPECTION

6.1 Terms of delivery is specified in the individual quote or contract. If no delivery term has been agreed Incoterm 2020 Ex Works (EXW) applies. If set forth in the quote, Capitainer will arrange for carriage at Buyer's sole expense.

6.2 If Buyer fails to accept delivery of any Deliverable within a reasonable period after receiving notice from Capitainer that they are ready for delivery, Capitainer may dispose of or store the Deliverable(s) at Buyer's expense.

6.3 Buyer shall have five (5) working days after delivery to inspect the Deliverables and Buyer shall notify Capitainer within five (5) working days in writing of any non-conformity reasonably discoverable on careful examination. Capitainer's sole obligation shall be, at its discretion, to replace or repair any non-conforming Deliverables or refund the purchase price for any such non-conforming Deliverables. This section 6.3 sets forth Buyer's sole remedy for any non-conforming Deliverables discovered during inspection.

6.4 Buyer shall notify Capitainer in writing within five (5) working days after delivery if the number of Deliverables delivered is less than the

amount specified in the order/quote. Capitainer's sole obligation shall be, at its discretion, to credit the purchase price for any undelivered Deliverables. This Section 6.4 sets forth Buyer's sole remedy for any short delivery.

6.5 Buyer is solely responsible for any import and/or export licenses or authorizations required by any governing body, unless otherwise agreed. Where delivery of any Product requires an export license or other authorization before shipment, Capitainer shall not be responsible for any delay in delivery due to delay in, or refusal of, such license or authorization.

6.5. Subject to the terms of Warranty per Section 10 below, Deliverables may only be returned at Capitainer's option, and with prior return authorization.

7. DELAY IN DELIVERY

7.1 Any time or date for delivery given by Capitainer to Buyer is an estimate of the date on which the Deliverables will be delivered to Buyer. Capitainer will use commercially reasonable efforts to meet any specified delivery date(s). Capitainer shall not be liable for any liability, loss, expense, claim or damage incurred by Buyer arising from any delay in delivery of the Deliverables or any part thereof, and further, without limitation to the foregoing, in no event shall Capitainer be liable for any indirect or consequential damages or economic loss including, loss of profit, arising from any delay in delivery.

8. RISK AND TITLE

The risk of loss to the Deliverables shall transfer to Buyer in accordance with the agreed delivery terms. Full legal and equitable title and interest in the Deliverables shall pass to Buyer upon delivery.

9. INTELLECTUAL PROPERTY

9.1 All intellectual property rights vested in the Deliverables and any related documentation (including any modifications, derivatives, and improvements thereto), as between Buyer and Capitainer, shall remain with Capitainer and no licenses to any such intellectual property is granted to Buyer. Any data relating to the manufacture or design of the Deliverables as disclosed by Capitainer or otherwise obtained by Buyer in connection with the use of the Products shall be deemed confidential information or intellectual property, as the case may be, of Capitainer and may not be used or disclosed to third parties without Capitainer's written consent. Buyer agrees and warrants not to take any action to reverse engineer, make, use, sell, or prepare derivative works based upon any the Deliverables, or any part thereof.

9.2 If Buyer's use of the Deliverables is, or in Capitainer's opinion may become enjoined as a result of an infringement claim relating to third party intellectual property rights, Capitainer may, at its option and expense, either (i) procure for Buyer the right to continue using the affected Deliverables; (ii) replace or modify the affected Deliverables so that it becomes non-infringing and remains functionally equivalent; or (iii) if, despite its commercially reasonable efforts, Capitainer is unable to do either (i) or (ii), Capitainer may terminate this Contract and refund to Buyer a prorated refund of any prepaid fees, if any. Capitainer shall have no obligation under this Section 9.2 to the extent any claim arises out of Buyer's (a) negligence or willful misconduct; (b) any use of the Deliverables that is not in accordance with the terms of this Contract, provided documentation, or Capitainer's instructions; (c) use of the Deliverables in combination with other products or services not provided by Capitainer; and/or (d) modification or alteration of the Deliverables without Capitainer's written consent for such. This Section 9.2 sets forth Capitainer's sole obligation and Buyer's sole remedy with regard to any claims of infringement of third party intellectual property rights.

10. WARRANTY

10.1 Capitainer warrants that the Products, upon delivery, are new and will perform in material conformance with its respective documentation, labels, instructions for use, or published specifications. Capitainer will, in its sole discretion either (i) replace any non-conforming Product or (ii) refund the purchase price to Buyer. Any claims under the warranty shall be submitted within fourteen (14) days from the discovery of the defect and in no event later than ninety (90) days from delivery. This Section 10.1 sets forth Capitainer's sole liability and Buyer's sole remedy for any warranty claim for any non-conforming Product(s).

10.2 Capitainer's warranty in this section shall be contingent upon the following conditions: (i) that there are no modifications to any Product, except with the prior written approval of Capitainer; (ii) that the Product has not been subjected to misuse, negligence or to unusual physical stress; (iii) that the Product has not had its lot number altered, effaced or removed; (iv) that the Product has been used in accordance with the

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instructions of use provided by Capitainer; and (v) that the Product has been stored in accordance with Capitainer's specifications and instructions.

10.3 Capitainer warrants that all Services performed in a professional, workmanlike manner and in accordance with generally accepted industry standards. Capitainer's sole liability for breach of this Section 10.3 shall be, at Capitainer's sole discretion, to reperform the Services until they are conforming or to credit Buyer for the non-conforming Services.

10.4 Capitainer hereby expressly disclaims, and Buyer hereby expressly waives, any warranty regarding results obtained through the use of the Deliverables, including without limitation any claim of inaccurate, invalid or incomplete results. All other warranties, representations, terms and conditions (statutory, expressed, implied or otherwise) as to quality, condition, description, merchantability, fitness for purpose or non-infringement (except for the implied warranty of title) are hereby expressly excluded. For clarity, Capitainer shall not be bound by any representations or statements on the part of its employees or agents, whether oral or in writing, including errors made in catalogues and other promotional materials

11. LIMIT OF LIABILITY

11.1 To the maximum extent permitted by law, Capitainer shall not be liable to Buyer or any third party for any lost revenues or profits, or any special, consequential, punitive, or incidental damages, whether or not foreseeable and whether or not Capitainer was advised of such losses/damages in advance, relating to this Contract or the subject matter hereof, whether such liability is in contract, tort (including negligence or breach of statutory duty) or otherwise. .

11.2 To the maximum extent permitted by law, the total aggregate liability of Capitainer arising under or in connection with the Contract shall be limited to the amount paid to Capitainer by Buyer during the twelve (12) months preceding the claim.

12. USE OF THE DELIVERABLES

12.1 The Products are sold only for the purpose described in the product documentation relating to the Deliverables. Any other use will void any warranties made by Capitainer in connection therewith. Buyer is solely responsible for compliance with any regulatory requirements, and shall promptly inform Capitainer of the need for any licenses and registrations, relating to Buyer's use of the Products. The reference to Buyer shall include the end users of the Products.

12.2 The Buyer shall, at its own cost and expense, ensure that the Products are used, treated, and handled in accordance with any Capitainer-provided instructions as well as any and all applicable regulations for use, sale marketing, transportation, packaging and storage.

12.3 Capitainer shall under no circumstances be liable for any errors or faults with regard to analytical or test results achieved in connection with Customer's use of the Products. The Buyer shall immediately inform Capitainer in writing of any injury and damage, that may have been caused by the Deliverables. The report shall include the nature of the injury or damage, and the Deliverables giving rise to such injury or damage. The Buyer shall not accept any liability on behalf of Capitainer, nor express any opinion about the cause for the injury or the damage, unless requested to do so by Capitainer in writing.

13. INDEMNITIES

13.1 Buyer shall indemnify, defend and hold harmless Capitainer, its affiliates and their respective directors, officers, employees, and agents, from and against all third-party actions, causes of action, claims, demands, losses, liabilities, damages, and expenses (collectively "Losses"), including reasonable attorneys' fees arising out of or related to Buyer's (i) use of any Deliverables that is not in accordance with any Capitainer-provided documentation or instructions, or in any manner not approved by Capitainer, (ii) negligence or willful misconduct; or (iii) any use of the Deliverables for which they have not been approved by a regulatory authority, including, but not limited to "off-label" use. Buyer shall have no obligation under this Section 13.1 to the extent that the Losses result from the negligence or willful misconduct of Capitainer.

14. INSOLVENCY; ADVANCE TERMINATION

14.1 In the event that Buyer becomes bankrupt or, being a company, goes into liquidation, Capitainer shall be entitled to terminate the Contract immediately upon notice and shall have the right, but not the obligation, to repurchase its Products for the price paid by the Buyer less a reprocessing and handling fee of 50%, all of which without prejudice to any other rights of Capitainer hereunder.

14.2 Either party may terminate this Agreement if the other party materially breaches this Contract and such breach is not cured within thirty (30) days from receipt of written notice thereof.

15. FORCE MAJEURE

Capitainer shall not be liable with respect to the nonperformance of any of its obligations to the extent such performance is prevented by any circumstances beyond its reasonable control including but not limited to strikes, lock outs or labor disputes of any kind (whether relating to its own employees or others), epidemics, fire, flood, explosion, natural catastrophe, military actions, blockades, sabotage, revolution, riot, civil commotion, war or civil war, plant breakdown, computer or other equipment failure and inability to obtain equipment.

16. COMPLIANCE

The parties shall comply with all applicable laws, with respect to the performance of this Contract, including, but not limited to, any data protection laws applicable to their respective processing of personal data under the Contract. Buyer shall notify Capitainer immediately (but in no event more than one (1) business day upon becoming aware) in writing of any complaints or claims of adverse incidents relating to any Deliverable.

17. GOVERNING LAW AND DISPUTES

17.1 This Contract shall be governed by and construed in accordance with the substantive laws of the State of Delaware without reference to its conflict of laws principles or statutory rules of arbitration. Each party hereby submits itself for the sole purpose of this Contract and any controversy or dispute arising hereunder to the jurisdiction of the courts located in Delaware, and any courts of appeal therefrom, and waives any objection on the grounds of lack of jurisdiction (forum non conveniens or otherwise) to the exercise of such jurisdiction over it by any such courts.

18. MISCELLANEOUS

18.1 Capitainer shall be entitled to offset any sums owed by Buyer.

18.2 Buyer may not assign this Contract or any of its obligations hereunder without the prior written consent of Capitainer.

18.3 In the event that any provision of this Contract shall be held to be invalid or unenforceable for any reason whatsoever, it is agreed that such invalidity or unenforceability shall not affect any other provision of this Contract and the remaining covenants, restrictions and provisions hereof shall remain in full force and effect and any court of competent jurisdiction may so modify the objectionable provision as to make it valid, reasonable and enforceable.

18.5 No waiver of any right or remedy in this Contract will be implied failure to enforce such right or remedy and no express waiver will affect any rights or remedies other than that to which the waiver is applicable and only for that occurrence.

18.6 All notices or other communications shall be deemed to have been duly given when made in writing and delivered in person, or sent by electronic means with receipt confirmed, or upon confirmed receipt after being sent by recognized overnight courier, addressed as specified in the Contract.

18.7 The parties acknowledge and agree that they are, and at all times during the term of this Agreement, shall remain, independent contractors in relation to each other, and that neither party nor its employees is an agent of the other Party or is authorized to make any representations or any commitment on the other party's behalf.

18.8 Any amendments to the Contract shall be made in writing and be duly executed by the authorized signatories of the Parties.