

General terms of sale (international)

Article 1. Scope – Definitions

1.1 In the present General terms of sale (international), “Excem” refers to the “société par actions simplifiée” Excem based in Maule, France, having a share capital of 96000 €, and registered under number 344 945 993 at R.C.S. Versailles. The meaning of words and wordings used hereinafter must be interpreted in accordance with the law of France.

1.2 In the present General terms of sale (international), “operation” means:
— a sale in which Excem is the seller, such sale being eventually a sale of patent rights, a sale of a right to use a software or a sale of a right to exploit another intellectual property rights; or
— a provision of a service in which Excem is the service provider; or
— a rental of thing for which Excem is the lessor, such rental of thing being eventually a licensing of patent or a licensing of software.

1.3 The present General terms of sale (international) shall only apply to operations for which Excem stipulates their applicability in a writing. When such is not the case, the “Condition générales de vente” of Excem are applicable.

1.4 The present General terms of sale (international) are applicable as from 1 March 2020, up to their replacement by another General terms of sale (international). No waiver or amendments to the present General terms of sale (international) shall be effective unless accepted in a writing signed by an authorized officer of Excem.

1.5 Depending on the nature of the operation, a customer of Excem (hereinafter referred to as “Client”) will be a buyer in the case of a sale, or the owner of the work in the case of a provision of service, or a lessee in the case of a rental of thing.

1.6 The word “deliverable” means a thing subject to a sale or to a rental of thing, or a result of a provision of service. A deliverable can be a tangible deliverable, like an apparatus, a component, a prototype, the medium of a document or of a computer program. A deliverable can also be an intangible deliverable like a consultancy, a study, a copyright, a right to exploit a patent or a computer program, a duration of work allocated to an engineering activity for a project.

1.7 In the event that any of the provisions of these General terms of sale (international) is held to be unenforceable or invalid, or is deemed non-written, the remaining provisions shall not be affected thereby.

Article 2. Object and scope of the offer

2.1 The operations are only intended for professionals (natural or legal persons which cannot be considered as consumers).

2.2 Deliverables defined in a specific offer : the conditions of the offer apply only to the deliverables specified in the offer. Excem has no commitment for additional deliverables. The offer is valid for one month, unless otherwise indicated in the offer itself.

2.3 Deliverables defined in a catalogue : prices and information given in Internet sites, catalogues, data sheets and price schedules are only meant as a guidance. All prices, specifications, information, illustrations and characteristics set forth in the catalogues and other advertising documents are subject to change without notice.

2.4 The Client shall not avail himself of standards, specification, descriptions, rules, or practice of any kind, not expressed by Excem.

2.5 Excem reserves the right to discontinue the marketing of any of the products and services mentioned in its Internet sites, catalogues or other advertising documents.

Article 3. Acceptance of the Contract

The Contract between the Client and Excem is deemed accepted when an agreement is signed by both parties or when an order is expressly accepted by Excem in a writing (in this case the date of the Contract is the date of this writing).

Article 4. Right to retain ownership for sales and provision of services

4.1 Notwithstanding the specific provisions related to intellectual property, Excem remains the owner of the deliverables up to the full payment of the price in principal and additional charges, including late payment penalties. In the event that this price is not paid when due, Excem will be entitled to take back the deliverables, the Contract will be canceled at the discretion of Excem as of right and without notice, and the installments already received will be kept by Excem as a compensation.

4.2 From the delivery on, the Client becomes liable for the risks of loss of or damages to the deliverables.

4.3 Excem remaining the owner of the deliverables up to the full payment of the price in principal and additional charges, the Client is forbidden to sell, transform or incorporate any deliverable until this full payment of the price.

Article 5. Confidentiality and intellectual property

5.1 Unless otherwise expressly specified in the Contract and except the right to use defined in section 5.4 below, the operation has no effect on any intellectual property rights, including copyrights, trademarks and patent rights, related or not to the deliverables. In particular, unless otherwise expressly specified in the Contract and except the right to use defined in section 5.4 below, all intellectual property rights owned by Excem prior to the operation remain with Excem.

5.2 During a provision of service, Excem may at its expense prepare and file any patent application for inventions related to the deliverables, provided Excem grants the Client a license to exploit the inventions, as from the full payment of the price.

5.3 No part of documents, books, or software included in the deliverables may be reproduced, adapted or modified in any way or by any means.

5.4 Software is delivered for use by the Client on a number of computers equal to the number of copies provided.

5.5 In the absence of an express clause to the contrary in the Contract, the Client is forbidden to sale any intangible deliverables.

5.6 Unless otherwise expressly specified in the Contract, the “General terms of confidentiality (international)” in force at the date of the Contract, which cover the

protection of confidential informations and the use of trademarks, are applicable.

5.7 However, in the event that the Client fails to timely pay a payment due to Excem and does not cure such failure by making such payment within 90 days of a written notice, Excem is allowed to use and/or disclose any information (document, software, etc) provided by the Client, including confidential information, as if such information was owned by Excem, in spite of the provisions of the General terms of confidentiality (international) to the contrary.

Article 6. Price – Payment terms – Taxes

6.1 Unless otherwise specified in the Contract, prices are expressed in euros, and taxes are not included. Payments shall be made using a cashier’s check payable to Excem drawn on a bank established in France, or via wire transfer. The Client bears the cost of bank charges so that the agreed amount reaches our bank account.

6.2 Unless otherwise specified in the Contract, the price shall be paid cash with order.

6.3 In the event that an installment is not received by Excem when due, a late payment penalty is due for payment, at the discretion of Excem as of right and without prior notice, this late payment penalty being equal to compounded interest applied to due amounts (including taxes) at a rate of 1.8 % per month, or the maximum permitted by law if lower, or the minimum permitted by law if higher, with a minimum of fifty euros (50 €).

6.4 The discount rate for installments paid before the payment date shown in the invoice is 0 %.

Article 7. Delivery – Shipment – Carriage – Custom

7.1 The delivery is deemed taking place in the premises of Excem in Maule.

7.2 In case of shipment by Excem, if the shipping is delayed by an act of God or any other cause beyond Excem control, the deliverable are deemed delivered at the prescribed date and place, the cost and risks of handling and storage being at the Client’s expense.

7.3 Deliverables are shipped at the Client’s risks, notwithstanding the right to retain ownership defined in Article 4. It is the Client’s responsibility to express, within the legal time frame, any reservations to the carrier about the condition of the deliverables, even if the carrier was chosen by Excem.

7.4 In case of shipment by Excem, deliverables are consigned packing and carriage forward. In case of international shipment, the Client shall also pay all duties, tariffs and export permit fees.

Article 8. Time for delivery – Penalty

8.1 Unless otherwise specified in the Contract, the time for delivery runs from the latest of the following dates: the date of the Contract; the date when Excem obtained all agreed information, supplies and instalment from the Client.

8.2 Excem is relieved of any obligation pertaining to time for delivery in case of force majeure or other event beyond Excem control.

8.3 Unless otherwise specified in the Contract, a penalty for late delivery will be applied to Excem. For each full week of delay as from the third, this penalty is equal to 0.5 %, with a cumulative maximum of 5 %, of the price, packing and carriage not included, of the deliverables for which the delivery is delayed. In addition, this cumulative penalty will never exceed the unquestionable damages suffered by the Client.

8.4 Any penalty will be a full settlement, and will only be applied in case of established prejudice caused by the delay.

Article 9. Guarantee

9.1 Excem will remedy to any defect in operation, resulting from faulty design, raw materials, components, or workmanship of any tangible deliverable.

9.2 Unless otherwise specified in the Contract, intangible deliverables are delivered as is, and the guarantee only applies to the tangible deliverable (medium) associated to them.

9.3 The obligation of Excem does not apply to defects caused by raw material or components delivered by the Client, or by a design imposed by the Client, or by maintenance work carried out by personnel not authorize by Excem to perform maintenance work, or by improper use or maintenance of the deliverables.

9.4 This guarantee only applies to defects occurring within a 6 months period beginning at the date of delivery.

9.5 In order to take advantage of this guarantee, the Client must inform Excem in writing without delay of the defects attributed to the deliverables, and provide all necessary justifications and explanations.

9.6 Workmanship resulting from the guarantee will in principle take place in Excem’s facility, after the Client has returned to Excem the defective deliverables for repair or replacement.

9.7 The shipment of the deliverables returned to Excem must comprise the whole deliverable, in its original packing, including a photocopy of the delivery order, and the reasons for the return of goods.

9.8 No returned deliverable can be accepted without previous written return material authorization from Excem. In the case such authorization has been granted, Excem reserves the right to reject the returned deliverables if the packing is damaged.

9.9 The liability of Excem is strictly limited to the above-mentioned obligations, and both parties agree that Excem may not be obliged to any indemnity of any kind.

Article 10. Applicable law – Dispute – Competent court

10.1 The Contract shall be governed by French law.

10.2 Any dispute concerning the Contract and/or the present General terms of sale (international) shall be exclusively subject to the jurisdiction of the Commercial Court (Tribunal de Commerce) of Versailles, France. This also applies in case of a dispute related to the guarantee, or in case of plurality of defendants.