

COOLORANGE SRL

GENERAL TERMS AND CONDITIONS OF SALE OF SOFTWARE GOODS

Lana, 2021/06/04

1 GENERAL PROVISIONS

- 1.1 The following general terms and conditions of sale (“**Conditions**”) shall apply to all deliveries of software products (“**Products**”) as listed in the Product List by **COOLORANGE SRL** (“**COOLORANGE**”) and constitute an integral part of each Sale Contract (“**Contract**”) that is entered into between a business customer as buyer (“**BUYER**”) and COOLORANGE as seller (“**SELLER**”). The BUYER is authorized by these Conditions to resell Products to third parties only if and where the BUYER has been granted appropriate reseller certifications or distribution rights by COOLORANGE for the Products to be resold/distributed.
- 1.2 “**Software**” means the machine readable (object code) version of the computer programs listed from time to time on the SELLER’s price list or provided with the hardware and made available by COOLORANGE for license to BUYER including firmware, and any copies made, updates to, or upgrades thereof. The SELLER shall be entitled to amend the Software specifications for new versions.
- 1.3 Both the contracting parties may also be collectively referred to as the “**Parties**” or singular “**Party**”. The Conditions apply even though the Contract does not refer to them expressly.
- 1.4 Particular Conditions of contract agreed upon by the Parties in writing for the purpose of a specific transaction shall prevail over these Conditions if in contradiction with the same. The Particular Conditions shall apply exclusively to the specific transaction they refer to.
- 1.5 These Conditions shall prevail over any general rules submitted by the BUYER, irrespective of whether COOLORANGE expressly objects to them or not.
- 1.6 The BUYER shall promptly inform COOLORANGE of any claim made against the BUYER by his customers or third parties concerning the Products delivered or intellectual property rights (“**IP Rights**”) related thereto.
- 1.7 Any information or data relating to technical features and/or specifications of the Products contained in the SELLER’s website, dépliant, price lists, catalogues and similar documents shall be binding only to the extent they are expressly referred to in the Contract.
- 1.8 Service performances for the software Products shall primarily result from the Master Software-Services and Support Agreement (“**MSA**”) for service agreements concluded by the Parties.

2 OFFERS AND ORDERS

- 2.1 Offers, including their accompanying items of documentation, such as illustrations, drawings, etc. made by COOLORANGE are non-binding and subject to confirmation.

2.2 Offers and quotations shall keep in force for **30 (thirty) days** from the date of issue, unless differently stated by COOLORANGE in writing.

2.3 “**Purchase Order**” (or “**PO**”) shall mean any purchase order, issued subject to these terms and conditions and with related attachments including without limitation, any software licenses, pricing schedules and delivery schedules, which shall describe the Products (or also Services) to be supplied by SELLER to the BUYER. POs and any Sales Contract agreed upon from time to time between SELLER and BUYER shall constitute separate contracts that incorporate these Conditions by reference and shall be governed by these Conditions.

2.4 Any Purchase Order shall constitute the entire understanding of the Parties and supersedes all previous agreements, statements and understandings from or between the Parties regarding the subject matter of the Purchase Order.

2.5 BUYER shall purchase or licence Products (or Services) by issuing a PO, signed, if requested by COOLORANGE, or (in the case of electronic transmission) sent by its authorized representative, indicating specific Products (and Services), SELLER’s numbers, quantity, unit price, total purchase price, shipping instructions, requested shipping dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, contract reference.

2.6 The Contract is understood to be concluded only upon written acceptance of the Purchase Order by COOLORANGE.

2.7 COOLORANGE shall use its best efforts to provide order acknowledgement information **within 5 (five) business days** for all Purchase Orders placed on WWW.COOLORANGE.COM or **within 8 (eight) business days** of receipt for Purchase Orders placed by any other method.

2.8 All Purchase Orders that COOLORANGE identifies as non-standard are non-cancellable and non-returnable.

2.9 BUYER may not change, cancel or reschedule Purchase Orders for standard Products without SELLER’s consent.

2.10 Notification of a Purchase Order confirmation may also be transmitted electronically.

3 PRICES AND TERMS OF PAYMENT

3.1 Prices in SELLER’s pricelists, quotations and in the Contract, are expressed in Euros or in any other currency and net of VAT, where applicable, and any additional cost and tax, where not otherwise provided in writing.

3.2 COOLORANGE reserves the right by giving notice to the BUYER to increase the prices of the Products at any time and in the event they are circumstances beyond the control of COOLORANGE (such as, without limitation any significant increase in the cost

of materials, labour, data or other costs of manufacture).

- 3.3 The BUYER shall pay the price in accordance with the payment terms stated in the Contract (i.e. in the PO/acceptance of the PO).
- 3.4 Unless otherwise agreed in the Contract, all SELLER's invoices to the Buyer shall be due and payable **within 14 (fourteen)** calendar days after the invoice date. **This payment term must be performed rigorously and without any delay by the BUYER. SELLER shall always be entitled to request whole or partial payment in advance for every delivery or partial delivery of the Products. For Purchase Orders with a commercial value of equal or more than € 10.000,00 SELLER shall be entitled to request a down-payment of at least 30% of the Purchase Price.**
- 3.5 **Any claim of any type does not authorize the BUYER to suspend or delay the expired and due payments.**
- 3.6 The BUYER shall have no right to make any compensation/set off, retention or reduction unless the counterclaims have been conclusively determinate by a Judge.
- 3.7 To the extent the BUYER fails to fulfil its payment obligation in time, SELLER shall have the right, without any formalities, to demand default interests on the outstanding balances in accordance with the Italian legislative decree n. 231/2002.
- 3.8 To the extent the BUYER fails to fulfil its payment obligation for more than **10 (ten) working days**, **COOLORANGE shall have the right to suspend or cancel, at its sole discretion**, further delivery and to declare all its claims arising from the business relationship as immediately payable. Moreover, SELLER may in such case request for an advanced payment of new orders.
- 3.9 It is agreed between the Parties that the price must be paid on COOLORANGE'S bank account **net receipts**. This means that any bank charges or costs for bank transfer **shall be paid by the BUYER**.

4 DELIVERY, TITLE AND RISK OF LOSS

- 4.1. Title to all Products, except Software IP Rights whose title remains at all times with SELLER, shall pass to the BUYER upon full payment of the Purchase Order.
- 4.2. Delivery shall be EX-Works (Incoterms 2010), SELLER's plant in Lana (BZ).

5 RECEIVING, INSPECTION AND ACCEPTANCE

- 5.1 BUYER shall be responsible for receiving, installing, starting up and maintaining the Products.
- 5.2 In the event BUYER fails to notify SELLER of any material non-conformities with the specifications within a reasonable period following delivery, **not to exceed 30 calendar days**, or is using those Products, Software (or Services) for the regular conduct of its business, the Products, Software (or Services) shall be deemed accepted, without prejudice to the warranty provision set forth hereunder in Art. 11.

6 TERMS OF DELIVERY – PRODUCT RETURN

- 6.1 COOLORANGE shall be entitled to make partial deliveries and in conjunction with this to send partial invoices.
- 6.2 The agreed or stated delivery periods can never be regarded as final deadlines, unless expressly agreed otherwise. **A mere infringement of the delivery period therefore shall not constitute default on the part of COOLORANGE.** The Contract cannot be terminated on account of infringement of the delivery period, unless COOLORANGE does not deliver within a reasonable period after the end of the delivery period notified in writing by the BUYER. A reasonable period as referred to in the previous sentence amounts to **at least 15 (fifteen) days**.
- 6.3 If the BUYER does not accept the delivery of the Products in the time agreed, **it must pay the purchase price all the same. In this case the storage of the Products is handled by COOLORANGE at exclusive risk and costs of the BUYER.**
- 6.4 SELLER has the right to delay the delivery if the BUYER demands subsequent changes (e.g. quantity of the Products, material, etc.) or additions.
- 6.5 COOLORANGE shall not be liable for any loss, damage, or penalty for delay in delivery or for failure to give notice of any delay.
- 6.6 **Product Return**: Return consignments of the Products shall only be accepted after prior written permission by COOLORANGE and are regardless of the agreed Incoterms **at the expense and risk of the BUYER**.
- 6.7 The acceptance of any return consignments does not constitute approval by COOLORANGE.
- 6.8 COOLORANGE does not accept returns unless COOLORANGE shipped a product other than as specified in the PO.

7 FORCE MAJEURE

- 7.1 If unforeseeable events should occur, COOLORANGE has the right to legitimately delay the delivery for the duration of the hindrance. In this case the delivery period shall be extended by a reasonable time.
- 7.2 Circumstances that are outside the control of COOLORANGE shall be considered as unforeseeable events, such as: wars, national disturbances, natural phenomena, fires, strikes, missing and delayed realization and delivery by sub-suppliers for reasons that cannot be attributed to COOLORANGE and any other Force Majeure that could compromise the performance of the Contract.
- 7.3 In each of the cases set forth in the present article the Buyer renounces the possibility of demanding that COOLORANGE pays penalties, or in any case sums by way of compensation for damages, in the case of missing or delayed delivery of the Products with respect to the dates set out in the Contract.

8 RETENTION OF TITLE

- 8.1 The Products supplied shall remain in the property of COOLORANGE until the full payment by the BUYER of the entire purchase price and of all other

relative amounts due to COOLORANGE related to the transaction.

- 8.2 BUYER may not modify the Products subject to retention of title in any way whatsoever.

9 IP RIGHTS AND SOFTWARE LICENSING

- 9.1 The Software is protected by law.
- 9.2 Notwithstanding the use of the term "Purchase" in this Contract, in these General Conditions or elsewhere, COOLORANGE holds the title of all IP rights in the COOLORANGE-SOFTWARE and all modifications, enhancements and other works deriving from the SELLER Software.
- 9.3 Subject to the terms and conditions of the Contract and the terms of COOLORANGE's **End User License Agreement ("EULA")**, which will be an essential part of this Contract, COOLORANGE grants to BUYER a limited, non-exclusive, non-transferable license and right to use the COOLORANGE Software/Products solely for the BUYER's own internal business purpose according to this Contract.
- 9.4 BUYER shall notify COOLORANGE promptly of any breach or suspected breach of the COOLORANGE EULA and further agrees that it will at SELLER'S request assist COOLORANGE in efforts to preserve COOLORANGE's or its supplier's intellectual property rights including pursuing an action against any breaching third parties.
- 9.5 Prior to the expiration of the license term, BUYER may at its discretion purchase an extension to the software license which only relates to the software components expressly mentioned in each case. Extending the software license after the license term has expired can result in initial set-up and support costs which will be communicated to the BUYER before the extension is implemented. BUYER is not entitled to be provided with the source codes.

10 CONFIDENTIALITY

"Confidential Information" shall mean the Software and any and all information in any form that each Party provides to each other in the course of any Purchase Order and that either (i) has been marked as confidential; or (ii) is of such nature that a reasonable person would treat as confidential under like circumstances. Confidential Information does not include work products resulting from the Services performed hereunder and information which (i) is already known to the other Party at the time of disclosure; (ii) is independently developed without the benefit of the other's Confidential Information; (iii) is received from a third party that is not under any confidentiality obligation towards the owner of the information; or (iv) has entered the public domain through no fault of the recipient. Neither Party shall, except with respect to their employees, contractors or agents with a need to know for purposes of any Purchase Order, disclose to any person any Confidential Information of the other Party without the other Party's prior written consent, except where Confidential Information

may be disclosed by law.

11 WARRANTY

- 11.1 For Software Products in respect of which warranty has not been excluded, COOLORANGE warrants conformity with the specifications valid at the time of delivery of the Software, provided that the sold Software is used in accordance with the installation requirements and operating conditions applicable.
- 11.2 Non-conforming Products subject to a warranty claim shall be returned to SELLER. SELLER's obligation and BUYER's sole remedy under this clause is, at SELLER's option the repair or replacement, correction, of any non-conforming Products, Software or part thereof.
- 11.3 The warranties referenced in this Section 11 do not apply if the COOLORANGE branded Products (i) has been altered, except by COOLORANGE; (ii) has not been installed, operated, repaired, used or maintained in accordance with instructions made available by COOLORANGE, (iii) has been subjected to abnormal or unusual physical or electrical stress or environmental conditions, misused, or negligently handled or operated or (iv) other circumstances for which COOLORANGE does not receive a payment of a purchase price or license fee.
- 11.4 Any complaints relating to packing, quantity, quality of the Products (**apparent defects**) ascertained by the BUYER must be reported and notified to SELLER by registered letter with return receipt **within 10 (ten) days** from the receipt of the Products; failing such notification the BUYER's right to claim the above defects will be forfeited. Any complaints relating to defects which cannot be discovered on the basis of a careful inspection upon receipt (**hidden defects**) shall be notified to SELLER by registered letter with return receipt **within 10 (ten) days** from discovery of the defects **and in any case, not later than 12 (twelve) months from delivery; failing such notification the BUYER's right to claim the above defects will be forfeited.**
- 11.5 A factual description of the nature of the defect must be attached. In the absence of the aforesaid requirements disputes cannot be asserted.
- 11.6 In the event the dispute raised by the BUYER turns out to be unfounded, the same shall be duty bound to compensate SELLER for all the costs it has incurred in verifying the relative grounds.

12 LIABILITY

- 12.1 SELLER's aggregate liability to the Buyer/Customer for damages under this Contract, and regardless of whether the claim for such damages is based in contract, tort, strict liability or otherwise, shall be limited to and under no circumstances exceed the purchase price of the Products provided under the Contract.
- 12.2 Notwithstanding the above SELLER is under no circumstance liable for any indirect, consequential, special, punitive or incidental, liquidated damages including, but not limited to, loss of profits or loss of

business arising out of or in connection with this Contract.

13 SERVICES

- 13.1 "Services" shall mean any kind of maintenance, or technical support, or any other services performed or to be performed by the SELLER, which are ruled by the SELLER's **General Terms and Conditions for Software Projects**, except for those Services provided under coolOrange's **Terms of Support**.
- 13.2 The General Terms and Conditions for Software Projects apply to any Service, except to those provided under coolOrange's Terms of Support, that is provided by the Seller and make up a new and different agreement, separated from this General Conditions even if the purchaser of Services is the BUYER and the Service requested by the BUYER concerns a Product bought in accordance to this General Conditions.

14 DATA PROTECTION LAW

- 14.1 The personal data of the BUYER shall be processed in accordance with the Italian Data Protection Law (Legislative Decree no. 196/2003), as amended by the GDPR (EU Reg n. 679/2016).
- 14.2 SELLER informs BUYER that his data shall be collected and processed for the only purpose of the performance of the business relationship.

15 APPLICABLE LAW AND JURISDICTION/ARBITRATION

- 15.1 The present Conditions and each subsequent Contract concluded by the Parties pursuant to Art. 2 are exclusively subject to the Italian substantive Law.
- 15.2 Any possible controversy deriving from these Conditions and of each subsequent Contract concluded by the Parties pursuant to Art. 2 shall be submitted to the exclusive competence and jurisdiction of the **Court of BOLZANO**.
- 15.3 However, as an exception to the principle here above, SELLER is in any case entitled to bring his legal action before the competent Court of the place where the BUYER has his registered office.
- 15.4 **In the event the BUYER has his registered office out of the CEE/EU**, any dispute arising out of or related to the interpretation, validity or performance of these Conditions and of each subsequent Contract concluded by the Parties pursuant to Art. 2, shall be settled by Arbitration under the Rules of the Milan Chamber of Arbitration (the "Rules") by a sole Arbitrator appointed in accordance with the Rules. The law applicable to the merits of the dispute is Italian Law. The seat of the Arbitration is Milan. The language of the Arbitration is English.
- 15.5 It is agreed between the Parties that SELLER, at its own discretion, may have the faculty to waive the exclusive jurisdiction set forth in the paragraph above to bring an action against the Buyer before his domicile's competent Court of Jurisdiction.

16 MISCELLANEOUS

- 16.1 **Modifications**. Any modification and/or departure from these Conditions or any subsequent Contract concluded by the Parties pursuant to art. 2, in order

to be valid and effective, must be stipulated and confirmed in writing by SELLER.

- 16.2 **Severability**. Where possible, each provision of these Conditions and of each subsequent Contract must be interpreted so as to make it valid and effective; however, should a provision be considered invalid or ineffective this shall not make the rest of the Conditions or Contract invalid.
- 16.3 **Communication**. Any communication to be made pursuant to these Conditions or to the Contract shall be valid, where not otherwise provided for, if made in writing to the addresses set out in the offer or to those communicated later by the Parties.
- 16.4 **Waiver**. Either Party's waiver, or failure to require performance by the other, of any provision of this Conditions or of any subsequent Contract will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself.
- 16.5 **Official Language**. This Agreement and the related documents are written and signed in the English language and the English version of these above-mentioned documents **shall take precedence and prevail** and is the only authentic text hereof.
- 16.6 **Conflict clauses**: In the event any provision of these Conditions is in conflict with the provisions of the EULA the provisions of the latter shall prevail and shall be effective between the Parties.

_____	COOLORANGE
The BUYER	The SELLER
_____	_____
Date/Place	
_____	_____
Signature	

The BUYER declares that he approves specifically, with reference to article 1341 of the Italian Civil Code, the following clauses of this Agreement:

Art. 1.4. and 1.6. (General Provisions); Art. 2.9 (Offers and Orders); Art. 3.2., 3.3., 3.4., 3.5., 3.6., 3.8, 3.9. (Prices and Terms of Payment); Art. 4.1. (Delivery, title and risk of loss), Art. 6.2., 6.3., 6.4., 6.5., 6.6., 6.8. (Terms of Delivery and Product returns); Art. 8 (Retention of title); Art. 9.2., 9.3. and 9.4. (IP Rights and software licensing); 11.3., 11.4., 11.5., 11.6. (Warranty); Art. 12 (Liability); Art. 15 (Applicable Law and Jurisdiction/Arbitration).

_____	COOLORANGE
The BUYER	The SELLER
_____	_____
Date/Place	
_____	_____
Signature	