Trustteam

Pure trust, pure IT

General Terms & Conditions

CAPELLEN
+352 31 40 40 1

TRUSTTEAM LUXEMBOURG
36, Parc d'activités
L-8308 Capellen
RCS. B.54.202
www.trustteam.lu

FULL CONTACT DETAILS:

TRUSTTEAM LUXEMBOURG S.A.
36, Parc d'Activités
L-8308 Capellen
RCS. B.54.202

Hereinafter referred to as "the Service Provider"

ARTICLE 1 – SCOPE OF APPLICATION

These general terms and conditions are intended to be applied to all proposals, orders and/or contracts concluded between the Service Provider and the Client, and this applies to all IT services within the remit of the Service Provider, whether these services involve the supply of computer hardware or the provision of services.

Consequently, any proposal accepted, order sent and/or contract concluded by the Client, acts as express acceptance on the part of the latter of these general terms and conditions, as well as the consequent waiver of its own contractual conditions.

However, special terms and conditions may, where applicable, be concluded by means of an agreement between both parties, in which case these general terms and conditions shall take on a supporting role.

Moreover, the Service Provider reserves the right to not apply one or several of the clauses contained in these general terms and conditions worded in its favour, without this non-application being able to be interpreted as a waiver preventing application at a later date.

Finally, any clause in these general terms and conditions that may be declared void shall not cause any of the other provisions to also be declared null and void, all of which will remain fully applicable.

ARTICLE 2 – CONTRACT DOCUMENTS AND ORDER OF PRIORITY

Within the context of the pre contractual and contractual relationship established between the Service Provider and the Client, several contractual documents may be drafted and approved.

In the event of any contradiction relating to the content or interpretation of these documents, the following decreasing order of priority is applicable:

- Contract or purchase order, as well as any annexes;
- Commercial proposal;
- General terms and conditions;

ARTICLE 3 – INFORMATION

By complying with these general terms and conditions, the Client acknowledges having received from the Service Provider, ahead of any contractual undertaking, all useful and detailed information relating to technical and organisational characteristics, the feasibility of the services proposed as well as any warnings concerning the use of the equipment.

ARTICLE 4 – PROPOSAL

Unless otherwise stipulated, any commercial proposal is valid for thirty (30) calendar days from the date of issue. The prices referred to therein after fixed and final, subject to any adjustments made necessary by the occurrence of the following factors:

- Audit report realised on the Client's infrastructure, before performance of the services contractually agreed, and concluding that the initial Client project requires adaptation/modification;
- Increase in equipment costs before the order is placed;
- Any circumstances outside the control of the Service Provider that warrant changes to the initial pricing (for example, changes to tax legislation).

ARTICLE 5 – ORDER

ARTICLE 5.1. – GENERAL

Any proposal countersigned or any purchase order issued by the Client, confirmed by the Service Provider by email, is considered to be an order and consequently, acceptance of these general terms and conditions.

The Client is bound by the terms referred to in any purchase order that it issues to the Service Provider.

Any change to the order requested by the Client can only take place with the Service Provider's agreement and subject to the drafting of a supplementary agreement.

ARTICLE 5.2. – NEW CLIENT AND PREPAYMENT OBLIGATION

In addition to Article 5.1. above, any first order from a new Client entails a correlative obligation to prepay the order in full.

ARTICLE 5.3. – ORDER CANCELLATION AND PENALTIES

In the event the Client cancels an order, the latter shall be obliged to pay a penalty of up to 25% of the total of the order in question excluding VAT, with a minimum being €125.

In the case that the on the Client's request, the order involves specific manufacturing processes, the total order amount shall be due on production of the desired equipment.

ARTICLE 6 – PRICE

ARTICLE 6.1. – GENERAL

The prices relating to services provided, excluding "pool of days" credits, are established on an annual basis and payable monthly.

Moreover, the prices issued in all proposals, orders and/or contracts are exclusive of VAT.

ARTICLE 6.2. – REVISION OF PRICES

The Service Provider reserves the right to revise initial prices in the following two situations:

- Automatically and based on the application of a price indexation clause applicable from the day following the publication of the new consumer price index in the Journal Officiel du Grand-Duché de Luxembourg;
- In the case that, during the commercial relationship, the overall structure of the contract undergoes substantial modification resulting from difficulties of a certain severity experienced by the Service Provider and/or unforeseen circumstances at the time of signing the agreement (hardship clause);
- Within the scope of the licence agreement, in the event of an increase in the "editor" price of licences..

ARTICLE 6.3. – INVOICING TIME FRAMES

As far as hardware and software are concerned, invoicing shall take place upon delivery.

As far as services provided are concerned, invoicing shall take place monthly, as set out in article 6.1. of these general terms and conditions.

ARTICLE 6.4. – METHODS OF PAYMENT

All invoices are payable within 30 calendar days from the date of issue.

ARTICLE 6.5. – COMPENSATION AND LATE PAYMENT INTEREST

In the event of failure to pay within the deadline set, the Service Provider shall send formal notice to remedy to the Client for it to honour its obligations within a period of eight (8) calendar days from the date of the registered letter relating to the late payment.

In accordance with that set out in article 1153 of the [French] Civil Code, this formal notice to pay confers entitlement to the application of legal rates of interest in force.

ARTICLE 6.6. – COMPENSATION AND COMPENSATORY INTEREST

Without prejudice to the forgoing, any late payment shall lead to the application of a penalty of 15% of the total excluding VAT of the related invoice, and this without any prior formal notice to pay being required.

ARTICLE 7 – DELIVERY

ARTICLE 7.1. – TIME FRAME

The delivery time frames indicated on the contractual documents are, unless provided otherwise, purely indicative and therefore not mandatory.

The Service Provider cannot be held liable under any circumstances should these deadlines not be met.

Consequently, the Client cannot validly withdraw itself unilaterally from the contractual relationship on the basis of a delay to a desired delivery, nor can it claim any compensation.

Moreover, the passing of this indicative delivery time frame does not release the Client of any of its obligations under these general terms and conditions.

ARTICLE 7.2. – DELIVERY RECEIPT AND LIABILITY RELEASE

All deliveries shall take place at the location indicated by the Client in advance.

Upon receipt of the equipment and/or services, a delivery receipt is signed in two copies by the Client.

By signing the aforementioned document, the Client confirms that the equipment and/or services delivered correspond to the order placed and correspondingly releases the Service Provider from any liability in the event of any defect discovered at a later date.

Moreover, in the event that it is impossible to deliver the equipment ordered to the Client, for fault of the latter, by expiry of the time frame indicated, said equipment shall be stored in the Service Provider's premises at the Client's expense and risks.

The price as invoiced shall remain due in full. In cases such as this, the related storage costs shall be borne exclusively by the Client.

ARTICLE 7.3. – PARTIAL DELIVERIES

By means of these general terms and conditions and with agreement of the Client, the Service Provider reserves the right to make and invoice for partial deliveries, notably when not all of the equipment is available at the same time.

ARTICLE 8 – TRANSPORTATION OF THE EQUIPMENT

Transportation costs for the equipment ordered shall be borne exclusively by the Client.

The Service Provider cannot accept any responsibility in the event of loss or damage to equipment during transit.

ARTICLE 9 – RETENTION OF TITLE CLAUSE AND TRANSFER OF RISKS IN THE EVENT OF EQUIPMENT SALE

ARTICLE 9.1. – RETENTION OF TITLE CLAUSE

The Service Provider shall retain full ownership of the equipment until payment in full of the agreed price.

The transfer of ownership in favour of the Client only takes place once the invoice relating thereto has been paid in full.

Pending payment, the Client undertakes to do its utmost to ensure the integrity of the equipment and compliant use of equipment that remains under the Service Provider's ownership.

In the case of failure to pay the invoice within the new time frame set following the formal notice to pay as provided for in article 6.5. of these general terms and conditions, the Service Provider reserves

the right, by virtue of this clause and its right of ownership, to proceed to take back possession of the equipment delivered at the exclusive expense and risks of the Client.

ARTICLE 9.2. – TRANSFER OF RISKS

Notwithstanding the retention of title in favour of the Service Provider as stipulated in article 9.1. of these general terms and conditions, the risks related to the equipment acquired by the Client are exclusively borne by said client upon signing the acceptance document for said equipment.

Consequently, the Client assumes all responsibilities and possible losses related to the equipment acquired even though it is not yet the legal owner, as the case may be.

The Client alone is responsible for risks both indirect and direct relating to the equipment as well as any harm caused to third parties.

Pending the effective transfer of ownership, the Client undertakes to do its utmost to ensure the integrity of the equipment and compliant use of equipment that remains fully under the Service Provider's ownership.

ARTICLE 10 – WARRANTY

ARTICLE 10.1. – "DEAD ON ARRIVAL"

Only equipment presenting a manufacturing defect ("Dead On Arrival") and for which a written claim has been sent by the Client to the Service Provider within a period of 5 calendar days of the acceptance document, shall be subject to exchange by the Service Provider.

Moreover, intervention by the Service Provider is strictly limited to replacing only those defective components of the equipment. Consequently, said warranty does not extend in any way to the equipment or infrastructure into which the defective equipment is to be integrated, nor to the performance of this equipment.

The Service Provider shall not intervene under any circumstances when the failure of equipment is due to use by the Client that does not comply with diligent and prudent use .

In effect, the aforementioned warranty presupposes use of the equipment by the Client that is in perfect compliance with the instructions issued by the manufacturer.

ARTICLE 10.2. – MANUFACTURER WARRANTY

Except within the framework of application of article 10.1. of these general terms and conditions, the warranty granted by the Service Provider is limited to the contractual warranty offered by the manufacturer of the equipment purchased by the Client, and this in its capacity as intermediary service provider.

ARTICLE 11 – FORCE MAJEURE

The Service Provider cannot be considered in default if the performance of its obligations, in full or in part, is delayed or impeded as a result of force majeure.

Force majeure is understood to be an external event that is unforeseen and unstoppable and makes it absolutely impossible to perform an obligation.

In the event of force majeure, the Service Provider is permitted to partially or fully suspend performance of its obligations for the duration of the event constituting force majeure, without obligation to compensate the Client.

If the period of force majeure exceeds three months, the Client may, by means of registered letter, terminate the business relationship with immediate effect, without compensation.

ARTICLE 12 – COMPLAINTS

In accordance with article 10.1. of these general terms and conditions, any complaint relating to the equipment delivered must be lodged within 5 calendar days of the acceptance document for the equipment.

Any complaint lodged correctly does not in any way release the Client from its obligation to pay for the equipment within the time frame set out in the contract.

The Service Provider will forward the complaint to the manufacturer who, if it considers the complaint to be founded, has the right exchange the disputed equipment for comparable equipment or to issue a credit note for an amount equivalent to that invoiced, without additional compensation or interest.

ARTICLE 13 – SUBCONTRACTING

By adhering to these general terms and conditions, the Client accepts that the Service Provider may call on external service providers to perform tasks assigned to it. These external service providers are notably required for the following functions:

- Supplier of IT hardware;
- Telecommunications and internet provider;
- Data centres;
- Security;
- Consultancy;
- Factoring.

In order to comply with that set out in article 28, paragraph 2 of Regulation (EU) 2016/679 (GDPR), the Service Provider undertakes to only subcontract certain necessary tasks to those external service providers that present sufficient guarantees in terms of implementing technical and organisational protection of personal data which may be entrusted to them. In the event that, for the performance of certain specific tasks which are contractually allocated to it, the Service Provider wishes to use an external service provider, it will seek prior written agreement from the Client.

ARTICLE 14 – LIMITATION CLAUSE

ARTICLE 14.1. – GENERAL INFORMATION

Any obligation incumbent on the Service Provider within the framework of the contractual relationship may only constitute an obligation of means, the Service Provider undertaking to do everything possible to carry out, "with due diligence", the missions assigned to it.

The Service Provider shall not be liable for any accidental loss of data due to the initiative of the Client, or for any other damage, physical or material injury suffered by the Client and/or its employees, subcontractors, customers and partners except in the event of gross negligence by the Service Provider.

In any event, even in the event of gross negligence, the Service Provider's liability shall be limited to the direct damage suffered by the Client.

The Service Provider shall not be liable for indirect damages such as "loss of profit" or "operating loss", or for damage caused to third parties or property distinct from the subject matter of the contract.

In any event, any damages due by the Service Provider to the Client shall be capped, all sums combined, at the amount excluding VAT actually received in the previous year by the Service Provider pursuant to the relevant contract or order form.

ARTICLE 14.2. – MATERIAL SERVICES

The Service Provider cannot be held liable in any way for the result obtained by the Client when integrating the equipment acquired into its own IT infrastructure. In addition, the Service Provider shall not be liable for any consequential or non-consequential immaterial damage caused in whole or in part by equipment installed, repaired or developed by third parties or by the Client itself. In such circumstances, the Client undertakes to indemnify the Service Provider for any claim against it and all related costs.

ARTICLE 14.3. – IMMATERIAL SERVICES

Where the Service Provider's mission is for immaterial services (see installation and configuration of software), its liability is limited to the sole obligation to proceed in accordance with the publisher's instructions in force at the time of performance of the said services. The Service Provider cannot therefore be held liable for any damage that may occur after the aforementioned services and for which it cannot be held responsible.

ARTICLE 15 – CLIENT OBLIGATIONS

By adhering to these general terms and conditions, the Client undertakes to collaborate in a responsible and prudent manner with the Service Provider.

Within this context, the Client shall provide to staff members of the Service Provider, tasked with carrying out the interventions, all information and documents in existence, required for full comprehension of the issue at hand and to fully assess the services to be provided.

Moreover, the Client shall make available to the Service Provider's agents (employees and/or freelance) all access, space and means to enable the service provider to perform its assignment in optimal conditions. As an example, and by no means limited to this: passwords, computers, telephone line, telephone, etc.

Finally, the Client undertakes to respect the planned dates for the performance of the services, as jointly agreed by the parties.

Except in the event of duly justified force majeure, cancellation or postponement of the scheduled intervention, less than 48 hours, working days, before the scheduled date :

- Require the Customer to pay 50% of the related invoice;
- In the case of a pool of days, will be equivalent to the permanent loss of half a day of service.

Except in the event of duly justified force majeure, cancellation or postponement of the scheduled intervention, less than 24 hours, working days, before the scheduled date:

- Require the Customer to pay 100% of the related invoice;
- In the case of a pool of days, this will be equivalent to the permanent loss of a full day of service.

ARTICLE 16 – PERSONAL DATA PROTECTION

ARTICLE 16.1. – GENERAL

Within the framework of the activities that define it, the Service Provider is required to collect a certain amount of personal data relating to the Client, notably to initiate and pursue an efficient quality business relationship.

To do this, the Service Provider intends to comply strictly with the provisions of Regulation (EU) 2016/679 (GDPR).

ARTICLE 16.2. – PURPOSES

The personal data collected by the Service Provider has the following purposes:

- Proposing services relevant to its area of competence and that fit perfectly with the objects of the company
- Compiling an up-to-date client list;
- Ensuring the management of commercial contracts;
- Ensuring the monitoring of services provided;
- Ensuring the management of any disputes.

Moreover, the email address and mobile phone details collected, can also be used to communicate any information relating to the activities of Trustteam Group (events, news, etc.).

In order to observe that set out in article 6, 1. a) of the aforementioned Regulation, the Client may express its objective to the processing of its personal data for marketing purposes, and can do so via this link :

https://forms.office.com/Pages/ResponsePage.aspx?id=ox35gPNapEy28c3RDQOaiUChl4Wf9mhMq2ZTGjxS2jZUNFFRNVEyTlk3MDRCNjRTVEc3VUZZOFhNTC4u

ARTICLE 16.3. – COMMUNICATION OF PERSONAL DATA TO THIRD PARTIES

Within the context of performing its assignments, the Service Provider is required to send certain personal data pertaining to the Client to the following recipients:

- Its sub-contractors when their assistance is required for the realisation of the services desired. The sub-contractors may, however, only use the data sent for the purpose of performing the contracted services. The Service Provider ensures that its subcontractors provide the same high level of security to any data entrusted to them;
- The Luxembourg Commission de Surveillance du Secteur Financier (CSSF), where appropriate;
- Any national authority pursuant to a legal obligation;
- Any judicial authority for the purpose of responding to legal action.

ARTICLE 16.4. – PROCESSING DURATION

Except when a longer time frame is imposed by legal provision or by a directive from an auditing body, the Client's personal data shall be stored for a period of five (5) years from the end of the contractual relationship.

ARTICLE 16.5. – DATA SECURITY

The Service Provider ensures a high level of security with regards to data, notably by copying data daily that has been entrusted to it on its own private cloud, comprised of two separate data centres. Moreover, only those employees who act as an essential link to ensure perfect execution of the services shall be authorised to access Client personal data and additionally shall be subject to a strict confidentiality undertaking.

ARTICLE 16.6. – EXERCISING RIGHTS

In accordance with articles 12-23 of Regulation (EU) 2016/679 (GDPR), relating to personal data protection, the Client may request access to its personal data, request the correction thereof, limit its use or request its deletion.

To do this, the Client shall make a request to the Data Protection Officer (DPO@trustteam.lu) or via the following link:

https://forms.office.com/Pages/ResponsePage.aspx?id=ox35gPNapEy28c3RDQOaiUChl4Wf9mhMq2ZTGjxS2jZUODRXRDhWNkc5UjlRUVgxUFZEVlFKN0hOVi4u

ARTICLE 16.7. - COMPLAINT TO THE COMPETENTSUPERVISORY AUTHORITY

In the event that the aforementioned regulation is not observed (GDPR), the Client is entitled to lodge a complaint with the following competent supervisory authority::

Commission nationale pour la protection des données (CNPD)
1, Avenue du Rock'n'roll
L-4361 ESCH-SUR-ALZETTE
Tél. : +352 26 10 60-1

ARTICLE 17 – CONFIDENTIALITY

ARTICLE 17.1. – ON THE PART OF THE SERVICE PROVIDER

The Service Provider duly notes that some information provided by or that needs to be supplied by the Client is of significant strategic importance to the Client.

The Client, within this context, has the obligation to inform the Service Provider of which documents require confidentiality. Any exchange of confidential information will be expressly marked "Confidential" by the Client.

Consequently, except for information that is widely known or in the public domain, the Service Provider undertakes the following with regard to the Client:

- to keep strictly confidential and not to disclose any information communicated within the context of its performance of this contract, unless required and with the Client's agreement;
- to take and implement all appropriate measures to keep the information confidential;
- not to communicate, forward, exploit or otherwise make use, for its own part or that of others, any information;
- to take all appropriate measure to ensure that partners, shareholders, directors, representatives, agents, authorised representatives, managers, employees and persons related to the service provider, also maintain the confidential nature of the information.

ARTICLE 17.2. – ON THE PART OF THE CLIENT

By adhering to these general terms and conditions, the Client duly notes its obligation to ensure the confidentiality of data relating to the Service Provider of which it has or may have knowledge during the pre-contractual or contractual relationship.

The following data is considered confidential (this list is not exhaustive):

- Commercial proposals;
- Projects and services proposed;
- Personal data relating to the Service Provider's staff;
- Etc.

ARTICLE 18 – NON-SOLICITATION CLAUSE

1.1 ARTICLE 18.1. – PRINCIPLE

The Client shall refrain from recruiting or putting to work in any way, directly, indirectly or through an intermediary, any employee, agent, staff member or freelancer, who works for the Service Provider.

This clause shall remain applicable, whatever the role of the employee in question, and even in the event that the employee initiates the request..

1.2 ARTICLE 18.2. – DURATION

This clause shall be effective for the duration of the contract, as well as for a period of twelve (12) months following the end of the contractual relationship.

1.3 ARTICLE 18.3. – PENALTY

In the event that this clause is breached, the compensation owed by the Client to the Service Provider is the equivalent to six (6) months gross salary for a salaried employee or equivalent to the overall cost of an employee working as a freelancer, calculated on the six (6) months that are the most representative out of the last twelve (12) months of service.

ARTICLE 19 – ASSIGNMENT OF RIGHTS

Any contractual relationship concluded between the Service Provider and the Client consists of a socalled "intuitu personae" relationship, such that neither the Client nor the Service Provider are

authorised to assign rights and obligations resulting from this agreement to any other third party without the prior written approval of the other party.

ARTICLE 20 – APPLICABLE LAW

All contractual relationships between the Service Provider and the Client are exclusively governed by the laws of Luxembourg as well as the provisions of Regulation (EU) 2016/679.

ARTICLE 21 – CLAUSE ALLOCATING JURISDICTION

The courts of Luxembourg are the only courts with jurisdiction for any dispute relating to the execution or interpretation of any contract concluded between the Service Provider and the Client, as well as relating to any element having a direct or indirect connection to said contract.

ARTICLE 22 – ENTRY INTO FORCE

These general conditions are applicable to any new commercial offer or any new supply or service contract issued as from 4/06/2019.