

GENERAL TERMS OF DELIVERY of marXact BV

1. General.

1.1 In the General Terms of Delivery the following terms are defined as detailed below:

- Terms: these General Terms of Delivery;
- marXact: marXact BV, a private limited liability company, with its registered office in Hilversum, the user of these General Terms of Delivery;
- Other Party: each natural person, legal body, partnership, limited partnership or other entity that enters into or has entered into an agreement with marXact, or to who an offer or proposal is or has been made or extended by or on behalf of marXact, or to who or by order of who a delivery is or has been made by or on behalf of marXact, or by order of or for the benefit of who one or more services is or has been performed by or on behalf of marXact.

1.2 These Terms cover offers made, quotations produced, agreements entered into and the execution thereof, and deliveries and services performed by or on behalf of marXact. Departures from these Terms will only be of force if agreed in writing by marXact and by the Other Party.

1.3 The applicability of general terms and conditions other than the Terms is explicitly excluded and the applicability of such other general terms or conditions is explicitly rejected by marXact. The acceptance of an offer or quotation made by or on behalf of marXact, entering into an agreement with marXact, the acceptance of a delivery from or on behalf of marXact, or the acceptance of services performed by or on behalf of marXact means that the Other Party accepts unconditionally that these Terms are of application and that the application of other general terms and conditions referred to in this Article is out of the question

2. Offers.

2.1 Each offer or quotation made by or on behalf of marXact is made without obligation and does not bind marXact except when and for so far as marXact has explicitly stated otherwise in writing or when the parties might have agreed otherwise in writing.

2.2 All brochures, catalogues, price lists and folders provided in connection with an offer or quotation and all associated (technical) information provided in the form of designs, drawings or other illustrations, models, samples, tables, schedules, etc, and all other data and information provided remains explicitly the industrial and intellectual property of marXact. The Other Party is expressly forbidden without marXact's permission previously given in writing from copying any material, data or information as meant in the previous sentence either wholly or partially and/or from making it known to third parties in whatever way and/or from allowing it to be used by third parties and/or from selling it or from placing it at anybody's disposal. The use of this material, data and information remains strictly limited to use by the Other Party within the framework of the order given to marXact. All the material, data and information meant here must be returned immediately to marXact at the first request from marXact or if, within the time limit of the offer, the Other Party does not enter into an agreement or if the Other party cancels this agreement.

3. Realisation and content of an agreement.

3.1 An agreement between marXact and the Other Party is realised at the moment that marXact confirms in writing the acceptance of an assignment or order from the Other Party; the scope and content of the agreement follows on from the written confirmation of marXact.

3.2 Insofar as permitted by law, potential alteration or (partial) cancellation of an assignment or order by or at the request of the Other Party can only take place with prior written consent by marXact and on the condition that work already performed by marXact and/or additional costs that arose are completely compensated by the Other Party.

3.3 For activities or assignments where, because of their nature and size, no quotation or order confirmation is sent, the agreement will be realised at the moment marXact or someone on behalf of marXact actually begins to carry out the agreement

3.4 An agreement with marXact is entered into on the condition that suppliers of marXact and other contracting partners fulfil their obligations on time and in the correct manner. The Other Party acknowledges that marXact is not liable for any action or omission of such suppliers.

3.5 When entering into an agreement or after that and before beginning with the execution of the agreement on his part or continuing with the execution of the agreement marXact is entitled to demand the provision of sufficient certainty from the Other Party regarding timely settlement by the Other Party of his payment obligations and other obligations pursuant the agreement.

4. Prices.

4.1 Prices are in Euro's and every quotation is without obligation.

4.2 Unless explicitly specified otherwise in writing, the prices are: (i) based on ex-works or ex-warehouse delivery from marXact; (ii) exclusive of VAT, import duties and other taxes, levies and duties; (iii) exclusive of the costs of packaging, loading and unloading, transport and insurance; (iv) exclusive of the costs of assembly, installation and commissioning, unless otherwise explicitly stated, in which case the costs named here will be separately specified.

4.3 In every case prices are stated or agreed upon under the condition that changes in exchange rates will be passed on if the official exchange rate at the moment of delivery deviates by more than 2% from the exchange rate on the date when the offer or quotation was made, the latter exchange rate parity being considered as 100.

5. Risk.

5.1 Insofar as permitted by law, The risk with regard to the goods sold and/or delivered by or in the name of marXact to the Other Party is transferred to the Other Party: for goods supplied out of stock, this occurs at the moment these goods are segregated for the benefit of the Other Party; and for other goods, this occurs at the moment the goods are loaded for transportation to the Other Party or to a place indicated by the Other Party, except when and for so far as it might be otherwise agreed in writing.

6. Delivery and delivery time.

6.1 Except when and for so far as it has otherwise been agreed in writing and without prejudice to the provisions in Article 4.2 of these Terms, deliveries are made on a carriage paid basis to the Other Party or to another place specified timely by the Other Party. For orders or deliveries under a specified amount, marXact is entitled to pass on an amount covering the administrative costs to the Other Party.

6.2 Except when and for so far as it has otherwise been agreed in writing and without prejudice to the provisions in Article 5 about the transfer of risk, the moment of delivery is the moment that the goods are unloaded or discharged at the place where they must be delivered (the actual transfer); this also holds good if marXact must assemble, install and/or commission the goods.

6.3 Insofar as permitted by law, The Other Party must report any shortages, defects and damage, in writing, directly to marXact within 24 hours of the delivery and if nothing is reported then the goods will be regarded as having reached the Other Party in good condition, complete and without damage.

6.4 MarXact is entitled to make partial deliveries, which can be invoiced separately.

6.5 Except when and for so far as it has otherwise been agreed in writing, the delivery times specified by or on behalf of marXact in an offer or quotation are not intended to have a fatal effect, which means, amongst other things, that when a delivery is late the Other Party must explicitly notify marXact in writing before marXact can be held in default.

6.6 If goods are not purchased by the Other Party within the delivery time or period, or if the Other Party does not observe an agreed call off period then marXact is entitled to invoice the Other Party for the goods in question and, furthermore, marXact is entitled to store these goods at its own discretion but wholly at the cost and risk of the Other Party.

7. Force majeure (non-attributable breach)

7.1 If marXact, as a result of force majeure, is prevented from fulfilling any of his obligations to the Other Party and in the judgement of marXact the force majeure is of a permanent or long-lasting nature, then the parties will discuss a settlement.

7.2 If marXact, as a result of force majeure, is prevented from fulfilling any of his obligations to the Other Party and in the judgement of marXact the force majeure will be of a temporary nature, then marXact is entitled to postpone the execution of the agreement until the circumstance, cause or event causing the force majeure situation no longer arises.

7.3 Considered as "force majeure" are each circumstance, cause or event, wherever it is occurring, appearing or arising which temporarily or permanently prevents the correct, complete and timely fulfilment of any obligation of marXact or makes it impossible or unreasonably problematic, and each circumstance, cause or event which marXact, in all fairness, cannot be expected to prevent or which wholly or partially falls outside the sphere of influence of marXact or on which marXact can exercise no influence. The following, amongst other factors, are considered as circumstances, causes or events resulting in force majeure: fire, explosion, lightning strike, ice break-up, low water, high water, tidal wave, spring tide, flood, earthquake, natural disasters; storm, tornado, cyclone, snow, frost and other weather conditions; strikes, work stoppages, excessive (sickness) absenteeism of personnel, labour unrest, lock-outs, boycotts; war (declared or not), mobilisation, siege, besieging, blockade, molestation;

riots, revolution, social unrest; governmental actions and/or regulations which prevent, delay or otherwise hinder the fulfilment of obligations; lack of transport resources; unnavigability or unusability of any eligible transportation routes or means of transport; disturbances or interruptions in the provision, delivery or availability of energy; disturbances or interruptions in or of the functioning of any public utility; disturbances or interruptions or ending of the supply of raw materials, semi-finished and/or finished; disturbances or delay in or of, or interruptions or ending of the supply of parts, spare-parts and other articles; each circumstance, cause or event that is the result of or is associated with the so-called millennium problem; non-fulfilment of obligations by a debtor or contract partner of marXact (including the non-fulfilment of obligations by one or more third parties); technical disturbances and/or faults, delays, disturbances or interruptions to or with the repair of machines, material, equipment, tools and/or instruments; serious illness and illnesses of an epidemic character.

8. Guarantee/Service.

8.1 With due observance to the provisions specified elsewhere in these Terms marXact guarantees the quality of the materials used and their promised characteristics as well as the correct working of the goods provided by marXact. For new products this guarantee is valid for a period of twelve (12) months after delivery, unless otherwise agreed in writing. A guarantee for goods purchased elsewhere by marXact is only given for and so far as it is provided by the original manufacturer(s). For products that are not new a guarantee is only valid for and so far as this has been explicitly agreed; with such a guarantee the provisions of these Terms apply except when and for so far as departures to them have been agreed in writing.

8.2 Faults in any goods supplied which fall under the guarantee will, exclusively at the discretion of marXact, be rectified or the goods will be replaced if the faults, in the opinion of marXact and/or manufacturer, are attributable to construction faults or faults in or any shortcomings of the materials used as a result of which the goods are unusable by the Other Party for the purpose for which they are can reasonably be thought of as intended.

8.3 Goods eligible for guarantee work must be sent carriage-paid to marXact. If the guarantee work is to be performed outside his own company then marXact is entitled to pass on the associated reasonable expenses to the Other Party insofar as permitted by law.

8.4 If, in the opinion of marXact, the goods tendered for rectification or repair exhibit no faults then all costs made will be passed on to the Other Party, also during the period under guarantee.

8.5 All guarantee agreements lapse if the Other Party itself makes changes and/or repairs to the product supplied or allows them to be made, or if the product supplied has not been or is not being used or treated exactly according to the supplied or applicable (manufacturers) directives or the user instructions, or is being used or treated injudiciously in any other way, or if a software change has been made in or with regard to the product supplied by a party other than marXact, or if the product supplied has been or is being used or applied for purposes other than for which it is intended, or if the product supplied has been or is being used in a way which marXact in all reasonableness could not have expected.

8.6 No guarantee is provided for consumables.

8.7 If the Other Party does not fulfil one or more of his obligations then marXact is released from his guarantee obligations.

8.8 Complaints regarding all products can be sent to info@marxact.com, marXact will respond to the substance of the complaint within a reasonable period of time.

9. Liability.

9.1 Any liability on the part of marXact is at all times limited to directly caused damage and is at all times limited to the amount, in each case, made good by the liability insurer of marXact; if necessary, and at the request of the Other Party, marXact will provide information about the amount insured. If marXact has no liability insurance then any liability on the part of marXact is at all times limited to the net amount invoiced for the task or circumstance in question.

9.2 Direct damage caused is only understood to mean:

9.2.1 Property damage within the meaning of section 3 title 3 of book 6 of the Dutch Civil Code;

9.2.2 Reasonable expenses incurred to prevent property damage, insofar as the Other Party can prove that these expenses led to a reduction of the direct damage within the meaning of the agreement;

9.2.3 Reasonable expenses incurred by the Other Party to establish the cause and scale of the damage, insofar as the findings relate to the direct damage within the meaning of the agreement;

9.2.4 Reasonable expenses incurred by the Other Party to have marXact's performance conform to the agreement.

9.3 MarXact is not liable for other damage than direct damage, such as loss of profits, loss of turnover, loss of expected savings and other similar financial losses, as well as loss of goodwill or good name or reputation and all other damage that does not fall within the aforementioned direct damage.

9.4 If marXact provides a helping hand during the assembly and/or commissioning and/or installation of the goods without this being explicitly mentioned in the assignment then this occurs wholly for the risk of the Other Party.

9.5 Without prejudice to the provisions otherwise specified in this Article, every claim for damages lapses one year after the damage has manifested itself or has been discovered or has been recognised or reasonably could have been expected to have been discovered or recognised, and, in all cases, three years after delivery.

9.6 With respect to goods for which marXact has involved third parties, the applicable (contract and/or guarantee) provisions applying to the respective transaction are also valid for the Other Party if and in so as far as marXact wants to make use of them.

10. Claims.

10.1 Without prejudice to the provisions in Article 6.3 of these Terms, any claims can only be handled if they are received in writing by marXact within eight (8) days of the delivery. For hidden faults, claims are only possible within the guarantee period.

10.2 Contrary to the provisions in Article 10.1 any claims with regard to goods for which a testing or inspection takes place must be made immediately on the date of testing or inspection and at the place where this testing or inspection occurs and, after that, confirmed at once to marXact in writing.

10.3 Claims can only be handled when the nature and grounds for the complaints are accurately stated.

10.4 Claims regarding invoices must be lodged in writing with marXact within eight (8) days of the date of the invoice.

10.5 If within the applicable time period no claim is made or no claim is made in the required manner then the delivery will be considered as completely satisfying the agreement and to be unconditionally accepted and approved by the Other Party; an invoice against which no claim has been lodged in the required manner within the period of eight days specified in Article 10.4 will be regarded as having been unconditionally accepted and approved by the Other Party.

10.6 If a claim with regard to goods supplied by marXact is found to be legitimate then marXact is only obliged to replace or repair the unsound goods, the Other Party having no additional right to any other compensation.

10.7 Lodging a claim never discharges the Other Party from his payment obligations towards marXact.

10.8 Returning the product supplied or any part thereof, for whatever reason, can only take place after the previous explicit written approval and with the sending instructions of marXact.

11. Permits etc.

11.1 MarXact's equipment uses various frequency bands for purposes including but not limited to, location tracking and the communication between the base station and or rover. Free usage of these frequency bands is determined per country and/or region. The Other Party itself is fully responsible for checking the applicable legislation and regulations in this area, before using marXact's products. MarXact is in no way responsible for the Other Party's usage of the equipment and can never be held liable for any costs arising and/or damages suffered because of it. The frequency bands can be found per product on the website of marXact, or in the manual of the product. Not being able to use marXact's equipment due to the lack of free/suitable frequency bands in the relevant region, is completely at the Other Party's risk and does not affect the Other Party's other obligations, such as payment obligations, under the Agreement.

11.2 The absence of any permits, concessions, licences, consents and so forth as meant in Article 11.1 will be considered as an accountable failing (failure) on the part of the Other Party and the Other Party will not be released from any of his commitments towards marXact nor can it be a reason for the postponement of the fulfilment of any obligation the Other Party has towards marXact.

11.3 The Other Party is liable for all damage which directly or indirectly may be caused by the absence of any permits, concessions, licences, consents and so forth as meant in Article 11.1 and the Other Party indemnifies marXact against claims and demands connected with such damage.

12. Intellectual property rights.

12.1 The Other Party will employ the software (in its widest sense), equipment, technical data, wiring and/or work plans, user and/or operating instructions, drawings and all other essential documentation and other data and information supplied by or on behalf of marXact only for its own (internal) use and will not in any way pass it on or sell or make it available to third parties nor allow any third party to use it.

12.2 If in the unhoped for event that that a good sold by marXact to the Other Party in The Netherlands infringes an industrial or intellectual ownership right of a third party and the Other Party is held liable then the Other Party is obliged at once to inform marXact in writing of the situation and marXact can then choose either to procure the right to be able to use the good, or to provide a replacement good which does not infringe the right, or, once the Other Party has returned the good, refund the purchase price to the Other party after subtraction of reasonable compensation to cover the period when the good was available to the Other Party. With regard to infringements of industrial and intellectual property rights outside The Netherlands the Other Party can make no claim or demand whatsoever against marXact.

12.3 MarXact cannot be held liable in any way with regard to the infringement of any industrial or intellectual property right or any other exclusive right which is the result of any change in or to a good sold or supplied by or on behalf of marXact or in the use or application of such a good which is different to that which marXact could have expected or assumed, or which is the result of its integration, use or application in combination with other goods not sold or supplied by or on behalf of marXact, or which is the result of a software amendment not made by marXact.

13. Ownership reservation.

13.1 Without prejudice to the provisions in Article 5 of these Terms regarding the risk and the transfer thereof, all the goods supplied by or on behalf of marXact remain the property of marXact until the moment that the debt owed by the Other Party to marXact has been settled in full, this debt being the amount that the Other Party has owed marXact since the realisation of the agreement inclusive of all interest and costs.

13.2 For so long as the ownership of the goods supplied by or on behalf of marXact remains, according to the provisions in Article 13.1, with marXact, the Other Party is obliged to hold these goods separately from other goods in such a way that they can easily and clearly be identified as the goods of marXact.

13.3 In the case of non-payment by the Other Party of any amount due to marXact and, furthermore, when the agreement is ended, marXact will be entitled to demand the return of any goods for which ownership reservation applies and to take the measures associated with this, taking into account any payments already made for the goods, this without prejudice to the right of marXact to demand compensation for possible loss or damage. In the case of non-payment or termination of an agreement each claim which marXact has against the Other Party becomes immediately due.

13.4 The Other Party is entitled to sell or to use goods on which there is an ownership reservation in favour of marXact within the framework of normal business operations; however, no right of security can be bestowed on these goods, while, with regard to these goods, the Other Party must not perform any actions or allow any actions to be performed which result in these goods becoming a part or element of one or more other goods. When goods with an ownership reservation still in favour of marXact are sold on, the Other Party is obliged to reserve ownership for himself and at the first request from marXact to cede to marXact all demands against the debtor of the Other Party, up to the amount that the Other Party owes.

14. Payment.

14.1 Unless otherwise agreed payment must be made within thirty (30) days of the invoice date by deposit or funds transfer to a bank or giro account specified by marXact.

15. Delay; interest and costs.

15.1 The Other Party will be liable for ensuring that a payment or the settlement of any other obligation occurs on time without the need for a reminder, summons or in default declaration.

15.2 If marXact does not receive a payment due from the Other Party on time then, beginning from the day on which the payment should have been made, marXact will automatically charge the Other Party interest.

15.3 All the legal and extra-judicial costs incurred by marXact including the costs incurred by marXact for legal aid and legal advice are to be borne by the Other Party. The extra-judicial collection costs amount to 15% of the amount to which the Other Party is indebted inclusive of any interest due, without prejudice to the right of marXact to claim damages from the Other Party for the actual collection costs made if these are more than the 15% specified.

16. Ending an agreement.

16.1 MarXact will terminate the agreement with the Other Party with immediate effect if: a. the Other Party is declared bankrupt, goes into administration, presents a request for suspension of payment, or if the Other Party (temporarily or definitely) is granted a suspension of payment or if there is a seizure of the total assets of the other Party or a part thereof; b. the Other Party, when this is a natural person, dies or is made a ward or if the merchandise of the Other Party is put under administration; c. if the Other Party, when this is a legal person, goes into liquidation or if a claim for the dissolution of the Other Party is made or a dissolution decision with respect to the Other Party has been or is taken.

16.2 If an agreement according to the provisions of this Article is terminated or dissolved then the amount that the Other Party owes to marXact at the moment of termination or dissolution remains as the full debt and the Other Party will be liable to pay interest and costs according to the provisions of these Terms, without prejudice to the right of marXact to demand damages or any other rights due to marXact.

17. Changes in an agreement.

17.1 Changes to an agreement are only valid if they are made in writing and where both parties have consented to the change(s).

18. Applicable law; disputes.

18.1 The Dutch Law is applicable to all offers, agreements, deliveries and services produced or brought out, entered into, performed or executed by or on behalf of marXact, with the exception of the applicability of the treaty of the United Nations concerning international trade agreements relating to movable goods (Vienna Trade Treaty).

18.2 All disputes also including those which are only considered as such by one party, resulting from or connected with an agreement to which these Terms are applicable or the execution thereof and which cannot be solved amicably will be settled in the first instance by the District Court of the district in which marXact is located, with the proviso that if a particular judge is imperatively appointed as competent judge then the dispute will be decided in the first instance by the judge so appointed, one way or the other without prejudice to the right of marXact to seizure or from taking other provisional measures at the place(s) and before the legal bodies that marXact wishes.

19. Validity.

19.1 If any provision in these Terms is not completely valid or only partially valid and/or not enforceable as a result of any legal directive, judicial judgement or any directive, decision, recommendation or measure from any local, regional, national or supranational authority or body or otherwise then this will have no effect on the validity of the other provisions in these Terms. If a provision in these Terms might not be valid for one or other reason indicated in the previous sentence but would be valid if it had a more limited range or scope then this provision will be automatically valid with the most far-reaching or extensive range or scope with which or within which it is valid.

marXact BV, April 2017