

Terms and Conditions of Sale

1. Definitions

In these Conditions the following terms shall have the following meanings:

Conditions means these Terms and Conditions of Sale;

Customer means the person so described in the Offer who purchases the Products;

Multiwave means Multiwave Technologies SA, a company registered in Switzerland having an address of 3 Chemin du Pre Fleuri, 1228, Plan les Ouates, Geneva, Switzerland, or its affiliates including Multiwave Innovation SAS, a wholly owned subsidiary company registered in France, having an address of 2 Marc Donadille, 13453, Marseille, France;

Offer means a quotation or invoice for a Product;

Price means the price of a Product;

Products means products sold by Multiwave, including any Software distributed by Multiwave;

Software means programs used to direct the operation of a computer or processor, as well as documentation giving instructions on how to use them.

2. Application; Contract Formation

- 2.1 These Conditions are applicable to and govern your purchase and use of the Products.
- 2.2 Offers will include a list of the Products that are the subject of the Offer, the Prices associated with those Products, and an estimated delivery date. Offers shall remain in effect for 30 days from issue by Multiwave, unless the Offer states it is valid for a longer duration.
- 2.3 A Customer accepts an Offer by so indicating in writing or by sending or authorizing payment in accordance with the terms of the Offer.
- 2.4 By accepting an Offer for a Product, Customer shall be deemed to have accepted these Conditions, as well as, if applicable, any specific conditions contained in the Offer. By your acceptance you are entering into a binding contract with Multiwave upon the terms described in these Conditions. By your acceptance you also warrant and represent that you have the legal capacity to accept these Conditions, including on behalf of any organization for whom you work or for whom you are purchasing a Product.
- 2.5 If you do not agree (or cannot comply) with these Conditions, your sole remedy is to refrain from purchasing our Products. Accordingly, failure to accept these Conditions means you are not permitted to purchase or use the Products.
- 2.6 No modification of these Conditions will be valid unless accepted by Multiwave in writing. Accordingly, Customer and Multiwave agree that any of Customer's terms and conditions or documentation applicable to its purchase of a Product shall not form a part of the applicable contract of sale and shall be without any binding effect.

3. Delivery and Delivery Costs

- 3.1 Delivery will be Ex-Works, at the facilities of Multiwave Innovation SAS at 2, Marc Donadille–13453 Marseille, France. Customer shall pay for transportation, insurance, applicable duties, taxes and customs formalities payable in relation to the delivery of the Products by the common carrier.
- 3.2 Any disputes with the carrier of the Products after delivery shall be the sole responsibility of Customer and shall not affect Customer’s acceptance of the Offer.
- 3.3 Customer shall only be entitled to cancel its acceptance of an Offer for late delivery in cases where (i) the Offer specifies a specific delivery date and that such date is binding and (ii) a delivery is more than 30 days late. Apart from cancellation, Customer shall have no other remedies for late delivery.

4. Software

- 4.1 The Software is licensed, not sold, to Customer for use only under the terms of this Section 4. Multiwave reserves all rights not expressly granted to Customer under this Section 4.
- 4.2 Multiwave hereby grants Customer a non-transferable license to use the Software in conjunction with the Products. Customer may not rent, lease, lend, sell, redistribute or sublicense the Software. Customer may not copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Software (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing terms governing use of any open sourced components included with the Software).
- 4.3 The foregoing license is effective until terminated by Customer or Multiwave. Customer’s rights under this license will terminate automatically without notice from Multiwave if Customer fails to comply with any term(s) of this license. Upon termination of the license, Customer shall cease all use of the Software, and destroy all copies, full or partial, of the Software.

5. Force Majeure

Multiwave shall have no liability to Customer if it is prevented from or delayed in performing its obligations under any contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control.

6. Warranties/Remedies/Limitation of Liability

- 6.1 Subject to the other provisions of this Section 6, Multiwave warrants to Customer that the Products will be free from defects in materials, workmanship and design affecting normal use, for the amount of time set forth below:
- The *EpsiMu*[®] toolkit: 1-year warranty from date of delivery in accordance with Section 3.1.
- 6.2 Subject to the other provisions of this Section 6, with respect to any Products that are Software, Multiwave warrants that the Software will perform substantially in accordance with Multiwave’s specification or the Software’s documentation for a period of 30 days from the date of delivery in accordance with Section 3.1.

- 6.3 THE FOREGOING WARRANTIES DO NOT APPLY TO, AND UNDER NO CIRCUMSTANCE SHALL MULTIWAVE BEAR ANY LIABILITY FOR, ANY PHYSICAL OR OTHER DAMAGES WHETHER TO PERSONS OR TO EQUIPMENT OF ANY KIND, WHICH MAY HAVE RESULTED DIRECTLY OR INDIRECTLY FROM, MISUSE OF THE PRODUCTS, ACCIDENTAL OR WILFUL DAMAGE, IMPROPER CARE OR STORAGE OF THE PRODUCT, USE OF CORROSIVE OR OTHER DAMAGING MATERIALS WITH THE PRODUCTS, OR DEFECTS FROM IMPROPER OR INADEQUATE INSTALLATION, USE OR MAINTENANCE, OR ACTIONS OR MODIFICATIONS BY THIRD PARTIES OR CUSTOMER.
- 6.4 IN ADDITION, MULTIWAVE PROVIDES NO WARRANTY OR GUARANTEE THAT RESULTS OBTAINED BY A CUSTOMER'S USE OF A PRODUCT WILL BE ACCURATE, PRECISE, OR SUFFICIENT FOR THE PURPOSE IN WHICH IT IS USED AND MULTIWAVE EXPRESSLY DISCLAIMS ANY LIABILITY THAT DIRECTLY OR INDIRECTLY RESULTS FROM CUSTOMER'S USE OF THE DATA OR INFORMATION GENERATED BY A PRODUCT INCLUDING ANY ERRORS, AMBIGUITIES, OR OTHER INACCURACIES CAUSED BY A PRODUCT OR CUSTOMER'S USE OF THE PRODUCT. Moreover, Customer agrees to indemnify Multiwave from any claim made by a third party arising from Customer's use of a Product or from data or results generated by a Product.
- 6.5 Customer's sole remedy in case of a breach of the warranty set forth in this Section 6 is replacement of the Product that is the subject of the breach.
- 6.6 THE WARRANTIES AND REMEDIES DESCRIBED IN THIS SECTION 6 ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AGAINST MULTIWAVE WITH RESPECT TO ANY CLAIM RELATING TO OR ARISING FROM THE PRODUCTS. THE PRODUCTS THEREFORE ARE PROVIDED WITHOUT ANY OTHER EXPRESS OR IMPLIED WARRANTIES OR OTHER PROMISES (INCLUDING WARRANTIES OF MERCHANTABILITY OR SATISFACTORY QUALITY, FITNESS FOR PURPOSE, OR NON-INFRINGEMENT).
- 6.7 MULTIWAVE SHALL NOT BE LIABLE TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW WHETHER IN TORT (INCLUDING FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY), CONTRACT, MISREPRESENTATION, RESTITUTION OR OTHERWISE FOR ANY LOSS OF PROFITS, SALES, REVENUES OR SAVINGS, LOSS OF BUSINESS, DEPLETION OF GOODWILL AND/OR SIMILAR LOSSES OR LOSS OR CORRUPTION OF DATA OR INFORMATION, OR PURE ECONOMIC LOSS, OR FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSS, COSTS, DAMAGES, CHARGES OR EXPENSES HOWEVER ARISING OR OTHERWISE RESULTING FROM THE USE OF THE PRODUCTS OR ANY INABILITY TO USE THE PRODUCTS. MULTIWAVE SHALL NOT BE LIABLE FOR ANY OF THE LOSSES DESCRIBED IN THIS CLAUSE EVEN IF YOU HAVE INFORMED MULTIWAVE OF THE POSSIBILITY OF SUCH LOSSES OR IF MULTIWAVE IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH LOSSES. MULTIWAVE SHALL ALSO NOT HAVE ANY LIABILITY AS DESCRIBED IN THIS CLAUSE IN THE EVENT OF ANY DELAY IN THE PERFORMANCE OF ITS WARRANTY OBLIGATIONS. NO WARRANTIES ARE APPLICABLE IN CASES WHERE CUSTOMER HAS FAILED TO PAY THE PRICE OF THE PRODUCTS IN QUESTION.
- 6.8 Save for liabilities that cannot be excluded under applicable law, IN NO EVENT SHALL MULTIWAVE'S LIABILITY TO CUSTOMER EXCEED THE PRICE OF THE PRODUCT THAT IS THE SUBJECT OF THE CLAIM IN QUESTION.

- 6.9 The warranties given hereunder are to Customer only. Customer hereby indemnifies and holds Multiwave harmless from any claims in relation to the Products which extend or increase Multiwave's liability beyond these Conditions.
- 6.10 In the event of any claim that your use of the Products infringes the intellectual property rights of a third party, you shall immediately notify Multiwave, permit Multiwave to have sole conduct of the claim at Multiwave's expense, including defending or settling such claim at Multiwave's discretion. IN THE CASE OF SUCH A CLAIM, MULTIWAVE MAY PROCURE THE RIGHT FOR YOU TO CONTINUE USING THE AFFECTED PRODUCTS, REPLACE OR MODIFY THE AFFECTED PRODUCTS SO THAT THEY BECOME NON-INFRINGEMENT OR, IF SUCH REMEDIES ARE NOT REASONABLY AVAILABLE, RECALL THE RELEVANT PRODUCT ON 7 DAYS' NOTICE TO YOU WITHOUT ANY ADDITIONAL LIABILITY OR OBLIGATION TO PAY LIQUIDATED DAMAGES OR OTHER ADDITIONAL COSTS TO YOU.

7. Terms of Payment

- 7.1 Customer shall pay Multiwave the Price in advance (i.e. before delivery), unless an Offer provides otherwise. Prices exclude all applicable VAT, sales or withholding taxes which shall be payable by Customer.
- 7.2 Late payments (in whole or in part) shall be subject to interest in the amount of 2% over the 1 month LIBOR rate (or nearest equivalent) for the currency applicable to the contract, with a minimum of 2% per annum, and shall accrue as of the date when payment is due until the date that the funds are received by Multiwave. In addition, in the event of a late payment, the Customer shall pay any applicable currency conversion losses, bank charges, or administration charges.

8. General

- 8.1 Notices under these conditions must be given in writing (including by email).
- 8.2 If any part of these Conditions is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect.
- 8.3 Multiwave may modify these Conditions or other conditions or policies applicable to your use of the Products from time to time. If we make any such changes, we will publish these on our website or otherwise inform you.
- 8.4 Each Offer and these Conditions and any other document referred to herein constitute the entirety of each contract for the sale of the Products and supersede any previous arrangement, understanding or agreement between Multiwave and Customer relating to the Products.
- 8.5 Customer may not assign or transfer any of its rights or obligations under any Contract, by operation of law or otherwise, without Multiwave's prior written consent. Multiwave may at any time assign, transfer, mortgage or charge any of its rights or obligations under the contract.
- 8.6 There are no third party beneficiaries under these Conditions or any contract.
- 8.7 These Conditions and any contract formed pursuant to them, shall be governed by the laws of

Switzerland without regard to its conflict of laws provisions. THE PROVISIONS OF THE UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS OF JANUARY 1, 1988 SHALL NOT APPLY TO THESE CONDITIONS AND ANY CONTRACT.

- 8.8 All disputes arising out of or in connection with these Conditions (or a contract formed pursuant to them) or arising out of or in connection relating to your purchase or use of any Product shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The language of the arbitration shall be English and the site of the arbitration shall be Geneva, Switzerland. IN ACCORDANCE WITH THE FOREGOING AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHTS TO LITIGATE, TO SEEK INJUNCTIVE RELIEF OR TO MAKE ANY OTHER RECOURSE TO JUDICIAL OR ANY OTHER PROCEDURE IN CASE OF DISPUTES OR CLAIMS RESULTING FROM OR IN CONNECTION WITH THE PRODUCTS, THESE CONDITIONS, OR ANY CONTRACT FORMED PURSUANT TO THESE CONDITIONS ARE HEREBY EXCLUDED, AND YOU EXPRESSLY WAIVE ANY AND ALL SUCH RIGHTS.
- 8.9 No delay, omission or failure by Multiwave to exercise any of its rights or remedies shall be deemed to be a waiver thereof or an acquiescence in the event giving rise to such right or remedy, but every such right and remedy may be exercised from time-to-time and so often as may be deemed expedient by Multiwave exercising such right or remedy.