

General Terms and Conditions for PRODUCTS of FYTAGORAS B.V.

These general terms and conditions of sale and license stated herein shall be an integral part of any contract resulting from orders for Products placed by Company at FYTAGORAS B.V. ("FYTAGORAS"). Any statement made on any form issued by Company shall not operate to defeat or modify the content and intent of these conditions unless to the extent specifically agreed upon in writing by FYTAGORAS.

1. **ACCEPTANCE:**

All orders are subject to acceptance by the management of FYTAGORAS at its principal office.

2. **PRICES:**

All prices pertaining to an order are quoted in the offer or will be quoted and/or confirmed by FYTAGORAS in subsequent addenda or Order Confirmation thereto.

- A. **FIRM OFFER:** Unless otherwise specified in the offer, all quoted prices shall remain firm for a period of thirty (30) days from the date of offer. Prices are quoted in EURO ('E) or EURO ('E) equivalent at the date of offer. In the event that a purchase order is accepted in a currency other than EURO (€), the invoiced price shall be the quoted price adjusted to take account of any variation in the exchange rate between the currency of the order and the EURO (€) to the date of delivery. Quoted prices are Ex Works (EXW) and Customer Arranged Pickup (CAP) as defined by INCOTERMS (latest edition) unless otherwise specified in the offer.
- B. **TAXES AND OTHER CHARGES:** All quoted prices are subject to additions which may be necessary to cover any duty, tax or charge, now existing or hereafter imposed by Government authorities on equipment or services quoted by FYTAGORAS, on the production, sale, distribution, delivery, import or export thereof, and/or on features related thereto.
- c. **ERRORS:** FYTAGORAS reserves the right to correct all typographical or clerical errors or omissions, which may be present in its prices, offers, documentation or specifications.
- D. **ESCALATION:** All prices quoted are based on deliveries as defined in the quotation. FYTAGORAS reserves the right to make partial deliveries of equipment as it becomes available, unless otherwise agreed upon in writing by FYTAGORAS. Delays caused by FYTAGORAS beyond the Quoted Delivery Time shall not give rise to any price reduction. In the event that delivery of equipment is delayed for reasons attributable to Company, including without limitation changes to the scope, changes to the specifications, or failure to take delivery, the price of the order shall be increased to account for the period of the delay, which increase shall include an interest component for any amount due equal to two basis points above the base rate of the ABN AMRO Bank for lending in EURO (€) on the original due date.
- E. **PRODUCTS, MAINTENANCE AND SPARE PARTS:** The term "Product" or "Products" will mean the both the research- and/or growth services as well as the delivery of machinery or goods. After Delivery, follow up advice, consultation and/or services, maintenance service and spare parts are not included in the price of the product unless agreed upon in writing by FYTAGORAS. Orders for parts or

repairs shall be subject to a minimum billing charge, to be determined by FYTAGORAS.

3. **TERMS OF PAYMENT:**
Payment shall be made within thirty (30) days from the date of the invoice unless FYTAGORAS specifies that payment is to be made by irrevocable letter of credit in a specific currency placed on a specific bank with bank charges for the Company's account. Partial payments shall be provided when so specified by FYTAGORAS or as a result of Scope Changes (in accordance with paragraph 4) in which event FYTAGORAS shall notify Company in writing of the modified payment terms. Where payment is disputed Company shall pay any and all undisputed amounts on their due date. Payment of non-recurring charges, as may be made to FYTAGORAS for special design, engineering or production materials, shall not convey title to either design, engineering work or special materials, but title shall remain in FYTAGORAS.
4. **SCOPE CHANGES:**
All changes affecting the research- or growth orders or to the equipment configuration or otherwise affecting the scope of the order are to be documented in writing for approval and authorization to incorporate such changes into the order. All changes authorized by Company are binding only if accepted by FYTAGORAS, and may result in price, delivery and/or condition changes. Pricing of changes shall be based on the then current prices. If an extension of delivery is required beyond the original schedule, a price increase shall apply unless otherwise agreed in writing. Letter(s) of credit, if applicable, shall be automatically extended, and their values enhanced, by Company as necessary to reflect changes in price and payment arrangements.
5. **CANCELLATION:**
Company may cancel its order by written notice, provided Company pays cancellation charges calculated by FYTAGORAS on the basis of the percentage of work completed and materials purchased on the date cancellation notice is received by FYTAGORAS. A period of two weeks' notice shall apply to the cancellation. Resale and products and materials committed by FYTAGORAS shall be paid for in full.
6. **TESTING and STAGING:**
Any additional tests or inspections requested by Company beyond standard FYTAGORAS test procedures shall be for Company's account, unless specified otherwise in writing by FYTAGORAS. On system products, product development and application engineering, FYTAGORAS will perform staging as agreed to and defined in the quotation with time and place designated by FYTAGORAS.
7. **ON-SITE RECEIPT OF EQUIPMENT AND INSTALLATION:**
Company shall be responsible for receiving, installing, starting up, and maintaining all equipment, unless specified otherwise in writing by FYTAGORAS.
8. **INTELLECTUAL PROPERTY RIGHTS and INDEMNIFICATION:**
 - A. The Company recognizes the exclusive right of FYTAGORAS to all trademarks, patents and other intellectual property associated with the design, manufacture, application and installation of the Products and the validity of all such patents.
 - B. Subject to the provisions set forth herein, the sale by FYTAGORAS of a Product implies the non-exclusive and non-transferable license to Company under any of intellectual property rights (IPR) to use and resell Products.
 - C. Any and all references to "sale" or "sold" of any software or documentation shall be deemed to mean a license regarding such software or documentation, and

no ownership or assignment of any intellectual property rights is intended nor shall be implied thereby.

- D. FYTAGORAS, at its sole expense, shall: (1) defend any legal proceeding brought by a third party against Company to the extent that the proceeding includes a claim that any Product as furnished by FYTAGORAS under an Agreement directly infringes the claimant's patent, copyright, trademark or trade secret; and (2) hold Company harmless against damages and costs awarded by final judgment in such proceeding to the extent directly and solely attributable to such infringement.

9 DELIVERY:

- A. Title to all products EXCLUDING SOFTWARE shall pass on receipt of full and unconditional payment in FYTAGORAS's bank account. Risk of loss or damage for all products shall pass upon delivery by FYTAGORAS to the transport or mail order carrier (EXW). Any claims for loss or damage after risk of loss has passed shall be filed by Company with the carrier and Company indemnifies FYTAGORAS in this regard.
- B. FYTAGORAS shall make commercially reasonable efforts to achieve the specified delivery dates. FYTAGORAS shall not be liable for any damages in the event of late delivery other than as specifically provided for in its Purchase Order confirmation. All such damages shall be construed as Liquidated Damages and shall constitute the Company's sole remedy in the event of late delivery.
- C. In the event that Company fails to take delivery of the Products in accordance with the order confirmation, FYTAGORAS shall have the right to place the Products in storage at Company's risk and cost, and not to release the Products until all such costs have been paid in full. FYTAGORAS may invoice for the Products upon the due date of delivery notwithstanding Company's failure to take delivery. In the event that Company fails to take delivery within three (3) months of being notified by FYTAGORAS shall be entitled to payment in full for any outstanding payments in respect of the Products, the costs of storage and the costs of disposal, including any increase due on the basis of the provisions hereof concerning late delivery and including reasonable charges for overheads and incidental expenses.
- D. Delays in the Delivery Time due to Company not or not timely providing approvals and/or complete information shall extend the original Delivery Time.

10 SOFTWARE LICENSES:

- A. LICENSE GRANT: All software programs and technical know-how which are embodied in human readable source form or machine readable object form and which include, but are not limited to, programs having a series of instructions, statements and data, and related materials provided by FYTAGORAS are the property of FYTAGORAS and/or its suppliers and are subject to the terms set forth in the End User License Agreement ("EULA"). Under said terms, Company is provided solely with a personal and nonexclusive license to use such programs solely for their business purposes in the location in which the software was furnished and for execution on the system for which it was provided.
- B. COPYRIGHT AND TITLE: All title and copyrights in and to the software programs (including but not limited to any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the software programs), the accompanying printed materials, and any copies of the software programs shall vest in FYTAGORAS and/or its suppliers. The software programs are protected by copyright laws and international treaty provisions. No title to the intellectual property in the software programs or material is

transferred to Company under these General Conditions of Sale and License or under the EULA. Therefore, Company must treat the software programs like any other copyrighted material (e.g., a book or musical recording) and not copy, disclose or use the same for any purposes not expressly authorized herein, except that Company may make a second copy of the programs for use only with the system for which such programs were acquired. Company must reproduce and include the copyright notice on any such backup copy. The written materials may not be copied.

- C. SEPARATION OF COMPONENTS: The software programs are licensed as a single Product. Its component parts may not be separated for use on more than one computer.
 - D. RESTRICTED USE: Company agrees not to reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for such software. Company may not lend, rent, lease or sub-license the Software to any third parties, but may transfer the Software and written materials permanent basis provided no copies are retained and the recipient has agreed in writing to the terms of an appropriate software license with FYTAGORAS. Storage media, which Company received from FYTAGORAS, may contain certain Software for which FYTAGORAS has not accepted an order from Company for a Software License. If Company desires to license this Software, Company must obtain the appropriate Software License from FYTAGORAS.
 - E. TERMINATION: Without prejudice to any other rights, FYTAGORAS may terminate the EULA and any other agreement under which Company has obtained the right to use FYTAGORAS software products if Company fails to comply with the terms and conditions of the EULA and/or these Conditions of Sale and License. In such event, all copies of the software programs and all of its component parts must be destroyed and such destruction confirmed by a sworn statement within five (5) days from FYTAGORAS' written notice of termination.
11. DOCUMENTATION:
FYTAGORAS will provide Company with a standard set of documentation unless otherwise specified in writing. Additional copies will be furnished at extra charge. All documentation will be in the English language unless expressly agreed upon in writing.

12. WARRANTIES:

- A. FYTAGORAS shall have no obligation or liability to Company:
 - 1. if FYTAGORAS is not:
 - promptly notified in writing of any such claim;
 - given the sole right to control and direct the investigation, preparation, defence and settlement of such claim, including the selection of counsel; and
 - given full reasonable assistance and cooperation by Company in such investigation, preparation, settlement and defence;
 - 2. if the claim is made after a period of one year from the date of delivery of the Product;

3. to the extent that any such claim arises from:
 - modification of the Product if the claim of infringement would have been avoided by use of the unmodified Product;
 - design, specifications or instructions furnished by Company; or the combination of the Product with any other product, service or technology;

- B. FYTAGORAS expressly warrants the products manufactured by it as meeting the applicable specifications for a period of twelve months (12) months following delivery (the Warranty Period). All other representations, warranties and conditions either express or implied (including, without limitation warranties as to merchantability or fitness for purpose) are hereby specifically excluded. Company retains responsibility for the application and functional adequacy of the offer. In addition, the following shall constitute the exclusive remedies for any breach by Fytagoras of its Warranties hereunder.

FYTAGORAS makes no other warranty of any kind whatsoever, expressed or implied, and all implied warranties of merchantability and fitness for a particular purpose which exceed the aforementioned obligation are thereby disclaimed by FYTAGORAS and excluded from this Agreement.

- C. **MATERIAL, WORKMANSHIP AND TITLE:**
FYTAGORAS warrants to Company that all hardware products manufactured and/or sold by FYTAGORAS shall be free from defects in material, workmanship, within the warranty period.

Company may - at its own cost - return Products or part thereof under warranty claim to FYTAGORAS's designated repair facility provided the returns are in conformance with FYTAGORAS's then current return authorization policy and are accompanied by a duly completed Return Merchandise Authorization (RMA) form as issued by FYTAGORAS.

FYTAGORAS shall either replace or repair any non-complying products free-of-charge and shall return these items at its own cost. Replaced products may contain refurbished components and if so, shall be equivalent to new products. Any product or component, or part thereof so replaced or repaired shall be warranted by FYTAGORAS for the remainder of the original warranty period or three (3) months, whichever is longer.

Company shall pay for returned Products that are not found to be defective or non-conforming together with the freight, testing and handling costs associated therewith. This warranty expressly excludes: prototypes, experimental products, beta testing products and samples of newly developed Products.

The cost to diagnose defects at the job site, if required, shall be for the account of Company.

Any and all such replacements or repairs necessitated by inadequate storage, transportation, misuse, neglect, improper installation, or accident, improper repair or preventative maintenance, or as a result of alteration, modification or by normal wear and usage (such as batteries, fuses and glass-breakage) or by the fault of the Company, or power sources supplied by others, or by attack and deterioration under unsuitable environmental conditions shall be for the account of Company. FYTAGORAS shall not be obligated to pay any costs or charges including "back charges" incurred by Company or any other party except as may be agreed upon in writing in advance by FYTAGORAS.

- D. **RESALE AND COMPATIBLE PRODUCTS:** resale and compatible products shall carry only the warranty as defined by the resale or compatible product

vendor, if any. FYTAGORAS shall have no responsibility for errors and defects in, or the proper functioning of, resale or compatible products unless to the extent otherwise agreed in writing by FYTAGORAS in the purchase order confirmation.

- E. PARTS: The warranties stated above shall apply equally to spare and replacement parts except that the period of warranty on such parts shall be limited to three months from the date of installation by FYTAGORAS or the date of delivery to Company, whichever the earlier. This applies for hardware components only.
- F. SYSTEM PRODUCTS: FYTAGORAS warrants that all Systems Products will meet agreed specifications (System Product or approved System Functional Specification). Software is of such complexity, that it may have inherent defects. If any significant deviations from the specifications exist, FYTAGORAS shall use commercially reasonable efforts to eliminate any such significant deviations reported to it by Company in writing, or to create a workaround. This warranty shall expire six (6) months from date of shipment of the system. The cost to diagnose defects at the job site, if required, shall be for the account of Company. This warranty is void in the event of influencing deficiencies, including but not limited to, input signal of poor quality, incomplete or inaccurate process data supplied to FYTAGORAS by Company, and unauthorized modification by Company. Any additional FYTAGORAS expenses, which result from such deficiencies, inaccuracies, etc., shall be for the account of Company.

13. FORCE MAJEURE:
Neither party shall be considered in default in performance of obligations (except for payment obligations) hereunder to the extent that performance of such obligations, or any of them, is affected by Force Majeure (as defined hereinafter). In the event of Force Majeure, the party whose performance being delayed or affected thereby shall inform the other party as soon as possible but in any event within seven (7) days after the start of such Force Majeure specifying the nature of the Force Majeure as well as the estimated duration thereof.
Force Majeure shall include, but not be limited to, hostilities, restraint of rulers or peoples, revolution, civil commotion, strike, epidemic, accident, fire, flood, wind, earthquake, explosion, blockade, or embargo, shortages of relevant components on the world-market, lack of or failure of transportation facilities or any law, proclamation, regulation or ordinance, demand or requirement of any Government or Governmental agency having or claiming to have jurisdiction over the work or with respect to materials purchased for the work, or over the parties hereto, or any Act of God, or other act of Government, or any cause whether of the same or different nature existing or future, which is beyond the reasonable control of the parties hereto.

14. CONFIDENTIALITY:
Company acknowledges that all technical, commercial and financial data disclosed to Company by FYTAGORAS is the confidential information of FYTAGORAS. Company shall not disclose any such confidential information to any third party and shall not use it for any purpose other than as agreed by the parties and in conformance with the purchase transaction contemplated herein.

15. GENERAL INDEMNITY:
To the fullest extent permitted by law, Company agrees to indemnify, defend, protect, release and hold harmless FYTAGORAS and its respective parent and affiliate

companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, agents, distributors, employees and insurers (hereinafter individually and/or collectively known as “indemnitee”), from and against any and all claims, demands, losses, damages, causes of action, suits and liabilities of every kind, including all expenses of litigation, court costs, and attorney’s fees, for injury to or death of any person or for loss or damage to any property (including without limitation, claims for pollution and environmental damage), and any civil or criminal fines or penalties, arising in favour of any third party or governmental agency or entity, or any indemnitee and their employees’ representatives and beneficiaries, in connection with or arising out of, directly or indirectly, or in any way incidental to the performance of this agreement of the Products and services provided hereunder (hereinafter individually and/or collectively known as “liabilities”). It is the intention of FYTAGORAS and Company that such indemnity shall apply regardless of whether the liabilities arise in whole or in part from the actual or alleged comparative, concurrent, active, passive, or contributory negligence of indemnitee. This indemnity includes Company’s agreement to pay all costs and expenses of defence, including without limitation attorneys’ Fees, incurred by any indemnitee. This indemnity shall apply, without limitation, to any liabilities imposed on any party indemnified hereunder as a result of any statute, rule, regulation or theory of strict liability including, but not limited to, strict products liability or strict statutory liability. The obligation of indemnification hereunder shall include, but not be limited to, the following: (1) liens by third persons against any indemnitee and their property, because of labour, services, materials, or any other type of lien, furnished to Company, its assignees, contractors or subcontractors, in connection with the Products supplied by FYTAGORAS, (2) expenses, claims, fines and penalties or other enforcement charges, resulting from the failure of Company to abide by any and all valid an applicable laws, rules or regulations of any governmental or regulatory authority with jurisdiction. It is understood and agreed by Company that in the event any indemnitee is made a defendant in any law suit, action or legal proceeding for which an indemnitee is indemnified pursuant to this agreement and Company fails or refuses to assume the defence thereof, that indemnitee may compromise and settle or defend any such claim, and Company shall be bound and obliged to reimburse indemnitee for the amount expended by indemnitee in settling and compromising any such claim, or for the amount expended by indemnitee in paying any judgment rendered therein, together with all reasonable attorneys’ fees incurred by indemnitee for defence or settlement of such claim. Any judgment rendered against indemnitee or amount expended by indemnitee in compromising or settling such claim shall be conclusive as determining the amount for which Company is liable to reimburse such indemnitee hereunder. All representations, warranties, indemnities and other undertakings of Company and all claims, rights and remedies of FYTAGORAS shall survive delivery, performance inspection, testing, acceptance, use and payment.

It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Agreement, such legal limitations are made a part of the indemnification obligations and shall operate to amend the indemnification obligations to the minimum extent necessary to bring the provisions into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

16. LIMITATION OF LIABILITY:
To the maximum extent permitted by applicable law, in no event shall FYTAGORAS or its suppliers be liable for any special, incidental, indirect or consequential damages whatsoever, nor for any loss of profits, revenue, goodwill, business interruption, loss of business information or any resulting pecuniary loss arising out of or in connection with the use of or inability to use the software programs or the provision of or failure to

provide support services, even if FYTAGORAS has been advised of the possibility of such damages. In any case, FYTAGORAS's entire liability under any purchase order governed by these conditions shall be limited to the greater of the amount actually paid for the products and € 25.000,--.

17. CLAIMS:

Any claims resulting from short delivery and/or visible defects - or defects capable of immediate discovery - must be communicated in writing to FYTAGORAS with precise details within ten (10) days of receipt of Products. Claims in respect of hidden defects shall only entitle the Company towards FYTAGORAS to replacement or repair within six months from date of shipment and shall be submitted in writing with precise details. Failing notification in writing within the aforementioned period(s) such claims shall be dismissed and shall not be binding on FYTAGORAS.

18. COMPLIANCE WITH LAWS:

Each party hereto represents that it is duly authorized to enter into the Agreement and represents that with respect to its performance hereunder, it will comply with all applicable international, state and local laws, including, but not limited to those pertaining to export or import controls or restrictions of other applicable jurisdictions.

If the delivery of Products or services under the Agreement is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, FYTAGORAS may suspend its obligations and Company's rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively, and FYTAGORAS may even terminate the Agreement, without incurring any liability towards Company.

Furthermore, if an end-user statement is required, FYTAGORAS shall inform Company immediately thereof and Company shall provide FYTAGORAS with such document upon FYTAGORAS's first written request; if an import license is required, Company shall inform FYTAGORAS immediately thereof and Company shall provide FYTAGORAS with such document as soon as it is available.

By accepting FYTAGORAS's Offer, entering into any Agreement and/or accepting any Products, Company agrees that it will not deal with the Products and/or documentation related thereto in violation of any applicable export or import control laws and regulations.

19. LAW AND JURISDICTION:

All disputes between Company and FYTAGORAS will be settled in accordance with Dutch Law by submitting the dispute - in first instance - to the District Court in The Hague, The Netherlands. The parties may agree to a different way, applicable law and/or location by mutual agreement. Should a dispute arise from the subject matter of any Offer, Confirmation or Agreement, the prevailing party in any resulting litigation shall be reimbursed by the other party for any and all reasonable attorneys' fees and expenses incurred.

20. MISCELLANEOUS:

The validity, construction, and interpretation of these conditions or of any contract of sale including these conditions, and the rights and duties of the parties thereto, shall be governed by the laws of the Netherlands, notwithstanding any conflict of law provisions applicable there under. Any offer or contract of which these conditions are a part constitutes the final, complete and exclusive statement of representations made by FYTAGORAS, and FYTAGORAS shall not be bound by any representations, promise or inducement of any kind unless set forth herein nor shall FYTAGORAS be bound to any representations made herein except to the designated recipient of any

offer or contractual commitment. No waiver, alteration or modification of any of the provisions herein or of the provisions of any contract arising here from shall be binding on FYTAGORAS unless modified in writing and signed by Company and FYTAGORAS. In case Specific Terms and Conditions are agreed upon, these Specific Terms and Conditions shall prevail over the General Terms and Conditions.

21. MODIFICATIONS AND CHANGES:

FYTAGORAS reserves the right to make any amendments or changes to these Terms and Conditions at any time. Such amendments, modifications and changes shall have effect (1) to all Offers, Confirmations and Agreements referring to such amended or modified Terms and Conditions as from the date of such Offer, Confirmation or Agreement, and (2) to any existing Agreement thirty (30) days from notification of such amendments or modifications by FYTAGORAS to Company, unless Company has notified FYTAGORAS within such 30 days period that it objects thereto.