

## **Product Sales terms and conditions of TMS Products B.V.**

The private limited company TMS Products is registered with the Chamber of Commerce under number 54811767 and is established at Tweede Havenstraat 3, 1976 CE in IJmuiden.

### **Article 1 Definitions**

1. The terms below are defined as follows in these general terms and conditions, unless explicitly stated otherwise:
2. Offer: Any written offer to the Buyer for the delivery of Products by the Seller, to which these terms and conditions are inseparably linked.
3. Buyer: The natural or legal person acting in the performance of a profession or business entering into an Agreement (at a distance) with the Seller.
4. Agreement: The (distance) purchase agreement for the sale and delivery of Products purchased by the Buyer from TMS Products.
5. Products: The Products offered by TMS Products are technological solutions for motorsports, whether or not supplied with hardware, including timekeeping systems developed by Mylaps.
6. Seller: The supplier of Products to the Buyer, hereinafter referred to as: TMS Products.

### **Article 2 Applicability**

1. These General Terms and Conditions apply to every Offer made by TMS Products and every Agreement between TMS Products and a Buyer and to every Product offered by TMS Products.
2. Prior to the conclusion of an Agreement (at a distance), the Buyer will be provided with these general terms and conditions. If this is not reasonably possible, TMS Products shall indicate to the Buyer how the Buyer can view the terms and conditions, which are at all times published on the website of TMS Products, so that the Buyer can easily save these terms and conditions on a durable data carrier.
3. In exceptional situations, these General Terms and Conditions may be deviated from if this has been explicitly agreed upon in writing with TMS Products.
4. These general terms and conditions also apply to supplementary, amended and continuing agreements with the Buyer. Any general and/or purchase terms and conditions of the Buyer are expressly not accepted.
5. If one or more provisions of these general terms and conditions are partially or completely null and void or are annulled, the other provisions of these general terms and conditions shall remain effective and the null and void/nullified provision(s) shall be replaced by a provision that is in keeping with purport of the original provision.
6. Any ambiguities or doubts about the contents, explanation or situations that are not provided for in these general terms and conditions should be assessed and explained in the spirit of these general terms and conditions.
7. Where reference is made to he/she in these general terms and conditions, this should also be understood as a reference to him/her, if and as applicable.

### **Article 3 The Offer**

1. All offers made by TMS Products are without obligation, unless explicitly stated otherwise in writing. If the Offer is limited or valid under specific conditions, this will be explicitly stated in the offer. An Offer is only deemed to have been made if it has been laid down in writing.
2. The Offer made by TMS Products is without obligation. TMS Products is only bound by the Offer if its acceptance is confirmed by the Buyer in writing within 30 days, or if the Buyer has already paid the amount due. TMS Products has nonetheless the right to refuse to enter into an Agreement with a potential Buyer for any valid reason, which is at the discretion of TMS Products.
3. The Offer contains an accurate description of the offered Product with corresponding prices. The description must be specific to such extent that Buyer is able to make a proper assessment of the Offer. Obvious mistakes

or errors in the Offer do not bind TMS Products. Any images and specific data contained in the Offer are only an indication and cannot be a reason for any compensation or the dissolution of the Agreement (at distance). TMS Products cannot guarantee that the colours in the image exactly match the actual colours of the Product.

4. Delivery times and Terms stated in TMS Products' Offer are indicative and, if exceeded, shall not entitle the Buyer to dissolution or compensation, unless expressly agreed otherwise.

5. A compound quotation does not oblige TMS Products to deliver part of the items included in the offer or quotation for part of the price quoted.

6. If and to the extent an offer is available, this does not automatically apply to repeat orders. Offers are only valid as long as stocks last.

#### **Article 4 Conclusion of the Agreement**

1. An Agreement is concluded when the Buyer has accepted an Offer from TMS Products by paying for the relevant Product.

2. An Offer can be made by TMS Products via the website.

3. If the Buyer has accepted the Offer by entering into an Agreement with TMS Products, TMS Products shall confirm the Agreement with the Buyer in writing or at least by e-mail.

4. If the acceptance deviates (on minor points) from the Offer, TMS Products shall not be bound by it.

5. TMS Products shall not be bound by an Offer if the Buyer could reasonably have expected or should have expected or should have understood that the Offer contains an obvious mistake or error. The Buyer cannot derive any rights from this mistake or error.

6. The right of revocation is excluded for the Buyer.

#### **Article 5 Implementation of the Agreement**

1. TMS Products will perform the Agreement to the best of its knowledge and ability.

2. TMS Products is not obliged to maintain or repair the delivered Products. If the Buyer wishes to have the delivered Products serviced or repaired, the Buyer is obliged to pay for such additional activities in accordance with the agreed rate. TMS Products is not obliged to comply with this request and may require the Buyer to enter into an additional Agreement for this purpose.

3. If and in to the extent required for the proper implementation of the Agreement, TMS Products has the right to have certain activities carried out by third parties at its own discretion.

4. The Buyer shall ensure that all information required by TMS Products or with regard to which the Buyer should reasonably understand that such information is necessary for the performance of the Agreement, is provided to TMS Products in a timely manner. If the information required for the performance of the Agreement is not provided to TMS Products in good time, TMS Products shall be entitled to suspend the performance of the Agreement.

5. In the execution of the Agreement, TMS Products is not obliged to observe or be bound by the instructions of the Buyer if this changes the contents or scope of the Agreement. If the instructions result in additional work for TMS Products, the Buyer shall be obliged to reimburse the supplemental or additional costs accordingly.

6. Before proceeding with the implementation of the Agreement, TMS Products may require security from the Buyer or full advance payment.

7. TMS Products is not liable for any damage, of any kind whatsoever, caused by TMS Products based on inaccurate and/or incomplete information provided by the Buyer, unless TMS Products was aware of such inaccuracy or incompleteness.

8. The Buyer indemnifies TMS Products against any claims by third parties who suffer damage due to the performance of the Agreement and which is attributable to the Buyer.

## **Article 6 Delivery**

1. TMS Products shall deliver or re-deliver the Products in the manner provided for in the Agreement. Any user documentation agreed upon will be provided to the Buyer in writing or electronically.
2. The Buyer shall install, set up, parameterise and/or adjust any software to be delivered, whether or not on the basis of the user instructions delivered by TMS Products, unless explicitly agreed otherwise.
3. If the commencement, progress or (re)delivery of the Agreement is delayed because, for example, the Buyer has failed to provide all requested information or has not provided all requested information in a timely manner, does not cooperate sufficiently, payment has not been received in a timely manner by TMS Products or there is any delay due to other circumstances beyond TMS Products' control, TMS Products shall be entitled to a reasonable extension of the delivery time. Any agreed delivery dates shall not be considered deadlines. The Buyer shall give TMS Products written notice of default and allow TMS Products a reasonable period of time to deliver. The Buyer is not entitled to any compensation due to the delay caused.
4. The Buyer is obliged to take delivery of the goods at the time they are made available to the Buyer under the Agreement, even if they are offered to the Buyer earlier or later than agreed.
5. If the Buyer refuses to take delivery or fails to provide information or instructions necessary for the delivery, TMS Products is entitled to store the goods at the expense and risk of the Buyer.
6. If the Products are delivered by TMS Products or an external carrier, unless agreed otherwise in writing, TMS Products shall be entitled to charge any delivery costs. These will then be invoiced separately, unless explicitly agreed otherwise.
7. If TMS Products requires information from the Buyer with respect to the execution of the Agreement, the delivery period shall commence only after the Buyer has provided TMS Products with all information necessary for the execution of the Agreement.
8. If TMS Products has specified a delivery time, this will be indicative. Longer delivery times apply to deliveries outside the Netherlands.
9. TMS Products is entitled to deliver the products in parts, unless this provision has been deviated from by agreement or the partial delivery does not have any independent value. TMS Products is entitled to invoice the delivered products separately.
10. Deliveries will only be made if all invoices have been paid, unless explicitly agreed otherwise. TMS Products reserves the right to refuse delivery if there is a valid fear of non-payment.

## **Article 7 Packaging and transport**

1. TMS Products undertakes in respect of the Buyer to properly package and secure the goods to be delivered in such a way that they reach their destination in good condition under normal use.
2. Unless otherwise agreed in writing, all deliveries are exclusive of turnover tax (VAT), including packaging and packaging materials.
3. Acceptance of goods without any comments on the consignment note or the receipt shall serve as proof that the packaging was in good condition at the time of delivery.

## **Article 8 Investigation, complaints**

1. The Buyer must examine the Product (or to cause it to be examined) at the time of delivery, and in any event within 10 days after receipt of the Product, however, the Buyer must only unpack or use it to the extent necessary in order to assess whether it retains the Product. In doing so, the Buyer must check whether the quality and quantity of the Products delivered correspond to the Agreement and whether the Products meet the requirements that apply to them in the normal (commercial) process.
2. The Buyer is obliged to examine and ascertain how the Product is to be used and, in the event of personal use, to test the Product in accordance with the instructions for use. TMS Products acknowledges no liability for any abuse of the Product by the Buyer.
3. Any visible defects or shortages must be reported in writing to TMS Products after delivery at [info@tmsproducts.com](mailto:info@tmsproducts.com). The Buyer is given a period of 14 days after delivery to submit such a report. Non-visible defects or shortages should be reported within 14 days after discovery, but at the latest within 6 months after delivery. In case of damage

of the Product due to careless handling by the Buyer, the Buyer shall be liable for any reduction in value of the Product.

4. If, pursuant to the previous paragraph, a timely complaint is made, the Buyer will still be obliged to pay for the purchased goods. If the Buyer wishes to return defective goods, this can only take place with the prior written consent of TMS Products in the manner indicated by TMS Products.

5. TMS Products is entitled to start an investigation into the authenticity and condition of the returned Products before a refund will take place.

6. Refunds to the Buyer will be processed as soon as possible, however, payment may take up to 30 days after receipt of the returned goods. Reimbursement will be made to the previously specified account number.

7. If the Buyer exercises its right of complaint, it shall not be entitled to suspend its payment obligation or to offset any outstanding invoices.

8. In failure of full delivery and/or in case one or more Products are missing, and this is attributable to TMS Products, TMS Products shall, following a request to that effect from the Buyer, resend the missing Product(s) or cancel the remaining order. The confirmation of receipt of the Products is decisive in this respect. Any damage suffered by the Buyer as a result of the (deviating) scope of the delivery cannot be recovered from TMS Products.

#### **Article 9 Prices**

1. During the period of validity of the Offer, the prices of the Products offered will not be increased, except in the event of changes in VAT rates.

2. The prices mentioned in the Offer are exclusive of VAT, unless explicitly stated otherwise.

3. The prices mentioned in the Offer are based on the cost factors applicable at the time of the conclusion of the Agreement, such as: import and export duties, freight and unloading costs, insurance and any levies and taxes.

#### **Article 10 Payment and collection policy**

1. Payment shall be made in advance in the currency stated on the invoice using the method indicated.

2. The Buyer cannot derive any rights or expectations from an estimate issued in advance, unless the parties have expressly agreed otherwise.

3. The Buyer must make a single payment in full to the bank account number and details of TMS Products. The parties may only agree on a different payment term with the explicit and written consent of TMS Products.

4. In the event of liquidation, bankruptcy, seizure or suspension of payment of the Buyer, TMS Products' claims against the Buyer shall be immediately due and payable.

5. TMS Products has the right to have the payments made by the Buyer first of all serve to pay the costs, then to pay the interest accrued and due, and finally to pay the principal sum and the accrued interest. TMS Products may, without being in default as a result, refuse an offer of payment if the Buyer designates a different sequence of payment allocation. TMS Products may refuse full redemption of the principal sum if the outstanding and accrued interest as well as the costs are not paid together with the principal sum.

6. If the Buyer fails to comply with its payment obligation and has not fulfilled its obligation within the 14-day payment term set for that purpose, the Buyer shall be in default.

7. From the date that the Buyer is in default, TMS Products shall, without further notice of default being required, claim statutory (commercial) interest from the first day of default until full payment and compensation of the extrajudicial costs in accordance with Book 6, article 96 of the Dutch Civil Code, to be calculated in accordance with the graduated scale from the decree on compensation for extrajudicial collection costs of 1 July 2012.

8. If TMS Products has incurred more or higher costs that are in fairness required, these costs are eligible for reimbursement. Judicial and execution costs incurred shall also be borne by the Buyer.

#### **Article 11 Guarantee**

1. TMS Products guarantees that the Products comply with the Agreement, the specifications, usability and/or the solidity standards stated in the offer and the statutory rules/regulations at the time of the conclusion of the Agreement. This also applies if the goods to be delivered are intended for use abroad and the Buyer has expressly notified the Seller of this use in writing at the time the Agreement is entered into.
2. If any guarantee has been given, it shall be limited to the provisions expressly agreed in writing and only to the extent that the guarantee has been received from the supplier/manufacturer. The guarantees provided by Mylaps can be found at [www.mylaps.com/warranty](http://www.mylaps.com/warranty).
3. If the Buyer rightly appeals to the guarantee, TMS Products shall be obliged to carry out a repair or replacement free of charge.
4. TMS Products does not guarantee that the Products will perform without errors and/or interruptions. TMS Products makes every effort to rectify errors (in the software) within a reasonable period of time.
5. If and to the extent possible, the guarantee moreover covers the recovery of mutilated or lost data. TMS Products shall never be responsible for the recovery of any mutilated and/or lost data, however, shall provide reasonable cooperation in the recovery of such data. The Buyer shall at all times take measures to prevent and limit failures, defects, mutilation and/or loss of data, whether or not based on information provided by TMS Products.

#### **Article 12 Suspension and dissolution**

1. TMS Products is entitled to suspend the fulfilment of the obligations or to dissolve the Agreement if the Buyer fails to fulfil the (payment) obligations under the Agreement or to fulfil them in full.
2. TMS Products is furthermore entitled to dissolve the Agreement existing between TMS Products and the Buyer, to the extent it has not yet been executed, without judicial intervention, if the Buyer fails to timely or properly fulfil its obligations under any Agreement concluded with TMS Products.
3. Furthermore, TMS Products shall be entitled to dissolve the Agreement or have the Agreement dissolved without prior notice of default if circumstances arise of such nature that fulfilment of the Agreement is impossible or can no longer be required in accordance with standards of reasonableness and fairness, or if other circumstances arise of such nature that unaltered maintenance of the Agreement can no longer be reasonably expected.
4. If the Agreement is dissolved, TMS Products' claims against the Buyer shall become immediately due and payable. When TMS Products suspends the fulfilment of its obligations, it retains its rights under the law and the Agreement.
5. TMS Products always retains the right to claim damages.

#### **Article 13 Limitation of liability**

1. If the performance of the Agreement by TMS Products results in liability of TMS Products in respect of the Buyer or third parties, such liability shall be limited to the costs charged by TMS Products in relation to the Agreement, unless the damage has arisen due to intent or gross negligence. The liability of TMS Products shall in any case be limited to the maximum amount of damages paid by the insurance company per event per year.
2. TMS Products is not liable for any consequential, indirect, lost profits and/or losses, lost savings and liability for damages resulting from the use of the delivered Products, which is excluded.
3. TMS Products is not liable for and/or obliged to repair damage caused by the use of the Product. TMS Products provides strict maintenance and use instructions that must be observed by the Buyer. All damage to Products as a result of wear and use is expressly excluded from liability (including traces of use, loss of use, damage due to dropping/falling, light and water damage, theft, loss of possession, etc.).
4. TMS Products is not liable for any damage that is or may be the result of any act or omission in response to (incomplete and/or incorrect) information on the website(s) or linked websites.
5. TMS Products is not responsible for errors and/or irregularities in the functionality of the website and is not liable for any malfunction or unavailability of the website for any reason whatsoever.

6. TMS Products does not guarantee the correct and complete transmission of the content of and e-mail sent by/on behalf of TMS Products, nor the timely receipt of an e-mail.

7. All claims of the Buyer on account of shortcomings on the part of TMS Products shall lapse if these have not been reported to TMS Products in writing, stating reasons, within one year after the Buyer was aware or could reasonably have been aware of the facts on which it bases its claims. All Buyer's claims shall in any event lapse one year after termination of the Agreement.

#### **Article 14 Force majeure**

1. If, as a result of a force majeure situation, TMS Products is unable to fulfil its obligations under the Agreement, it shall not be liable nor can it be held to fulfil any obligation in the event it is impeded to do so as a result of a circumstance for which it is not responsible and which is not for its account under the law, any legal act or generally accepted practice.

2. Force majeure shall in any event include, however, is not limited to the provisions included in this respect in the law and in case law, (i) force majeure of suppliers of TMS Products, including Mylaps, (ii) failure to properly fulfil obligations of suppliers required or recommended by the Buyer to TMS Products, (iii) defects in items, equipment, software or materials of third parties, (iv) government measures, (v) power failure, (vi) failure of the internet, data network and telecommunication facilities (for example by Mylaps): cybercrime and hacking), (vii) natural disasters, (viii) war and terrorist attacks, (ix) general transport problems,

(x) strikes in the company of TMS Products and (xi) other situations which, in the opinion of TMS Products, are beyond its control, which temporarily or permanently prevent the fulfilment of its obligations.

3. TMS Products has the right to appeal to force majeure if the circumstance preventing (further) performance occurs after TMS Products should have fulfilled its obligation.

4. The parties may suspend the obligations arising from the Agreement during the period of force majeure. If this period lasts longer than two months, either party is entitled to dissolve the Agreement, without any obligation to compensate the other party for damages.

5. To the extent that TMS Products has already partially fulfilled its obligations under the Agreement or will be able to fulfil them at the time of the occurrence of force majeure and the part already fulfilled or still to be fulfilled, has independent value, TMS Products shall be entitled to invoice the part already fulfilled or still to be fulfilled separately. The Buyer is obliged to pay this invoice as if it were a separate Agreement.

#### **Article 15 Transfer of risk**

The risk of loss of or damage to the Products that are the subject of the Agreement shall pass to the Buyer being a business from the moment the Products leave the warehouse of TMS Products.

#### **Article 16 Intellectual Property Rights**

1. All intellectual property rights and copyrights of TMS Products are exclusively vested in TMS Products or Mylaps and are not transferred to the Buyer.

2. The Buyer is prohibited from disclosing and/or reproducing, altering or providing to third parties any documents that are subject to the intellectual property rights and copyrights of TMS Products and/or Mylaps without the express prior written consent of TMS Products and/or Mylaps. If the Buyer wishes to make changes to the products delivered by TMS Products, TMS Products must explicitly agree to the intended changes.

3. The Buyer is not allowed to use the Products in which the intellectual property rights of TMS Products and/or Mylaps are vested, other than as agreed in the Agreement.

**Article 17 Privacy, data processing and security**

1. The (personal) data of the Buyer and visitors to the website(s) are handled with all due care by TMS Products. If so requested, TMS Products will inform the person concerned accordingly with respect to this.
2. If TMS Products is required under the Agreement to provide protection for information, this protection shall comply with the agreed specifications and a level of security that is not unreasonable in view of the state of the art, the sensitivity of the information and the associated costs.

**Article 18 Complaints**

1. If the Buyer is not satisfied with the Products of TMS Products and/or has complaints about the (performance of the) Agreement, the Buyer is obliged to file these complaints as soon as possible, however, no later than 14 calendar days after the relevant cause of the complaint. Complaints can be filed via [info@tmsproducts.com](mailto:info@tmsproducts.com) with the subject "Complaint".
2. The complaint must be sufficiently substantiated and/or specified by the Buyer in order for TMS Products to be able to deal with the complaint.
3. TMS Products will respond to the substance of the complaint as soon as possible, however, no later than 72 hours after receipt of the complaint.
4. The parties will try to reach a solution together.

**Article 19 Applicable law**

1. All Agreements between TMS Products and the Buyer shall be governed by Dutch law. The applicability of the (CISG) Vienna Sales Convention is expressly excluded.
2. In the event of interpretation of the contents and purport of these general terms and conditions, the Dutch text prevails at all times. TMS Products has the right to amend these general terms and conditions unilaterally.
3. All disputes arising from or in relation to the Agreement between TMS Products and the Buyer shall be settled by the competent District Court of Noord-Holland, unless provisions of mandatory law lead to the jurisdiction of another court.

IJmuiden, 6 February 2020