

GENERAL TERMS OF DELIVERY of marXact B.V.

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We are marXact, a young and 100% Dutch company developing universal and cost-efficient measurement solutions for a broad public. This document contains our General Terms of Delivery: the terms that apply to our cooperation.

Article 1: Applicability of our Terms

These Terms apply to all our offers and agreements. The applicability of other (general) terms and conditions is excluded.

Article 2: Offers and Contracts

1. Unless agreed otherwise, all our offers are without obligation.
2. Our quotations are always subject to a change of price in the interim. Our prices are: (i) listed in euros (€); (ii) based on delivery ex works or ex warehouse; (iii) exclusive of VAT, import duties, and other taxes, levies, or duties; (iv) exclusive of the costs of transport and insurance, to the extent the shipment cannot be shipped using UPS Standard; and (v) exclusive of the costs of assembly, installation, and commissioning, unless explicitly stated otherwise, in which case the said costs will be separately specified.
3. We may charge an amount of €50 in administrative and shipping costs for orders or deliveries not exceeding an amount of €500.
4. All brochures, catalogues, price lists, and folders provided in connection with an offer, 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 explicitly remains our industrial and intellectual property. Copying any material, data, or information as referred to in the previous sentence and/or having it made known to third parties in whatever way and/or allowing it to be used by third parties and/or selling it or placing it at anybody's disposal, in all cases either in whole or in part, without our prior written permission is prohibited. No use may be made of this material, data, and information other than personal use. If no agreement is concluded within the offer period, or if an agreement concluded with us is cancelled for whichever reason, all the material, data, and information referred to herein must immediately be destroyed or, at our request, be returned to us.

Article 3: The Agreement

1. You agree with our offer and an agreement is concluded if:
 - a) we have received a confirmation of acceptance by post or e-mail;
 - b) we have sent you an order confirmation in response to an order made via the webstore or to the oral acceptance of an offer.
2. Should you wish to amend the substance of our agreement at a later point, please submit your proposed emendation to us in writing. We will assess your proposal and inform you about the conditions that need to apply for us to agree with the emendation as soon as possible.

Article 4: Delivery and Delivery Terms

1. Except in case we agreed otherwise in writing, all deliveries are made on a carriage paid-basis to your office, house, or any other place as designated by you within the set term.
2. Except where otherwise agreed in writing, and without prejudice to the provisions of Article 6 concerning the transfer of the risk, the moment where the goods are unloaded or discharged at the place of delivery (the time of actual transfer) will be deemed to be the time of delivery. The foregoing also applies in case we assemble, install, and/or commission the goods.
3. Any defects of and damage to the goods supplied must be reported to us in writing within the term of 1 week from delivery. Should we receive no such report, we will assume that the goods have arrived in proper order, without shortage, and without damage.
4. We are entitled to make partial deliveries and to invoice such partial deliveries separately.
5. Unless agreed upon otherwise, the delivery terms stated in our offer are not fatal deadlines. This means that you must first give us notice in case our delivery is late before we actually will be in default.
6. If receipt of the goods is not taken within the delivery term, or if the call-off deadline is not observed, we will be entitled to invoice you for the goods concerned and to store these goods at our discretion, and for your account and risk.
7. We do our utmost to have you be satisfied. Should you still have a complaint, please submit it via e-mail to support@marxact.com. We will provide you with a substantive response to your complaint within a reasonable term.

Article 5: Subscription, Cancellation, and Payment Conditions

Should you take out a subscription (software licence and/or data storage service for a limited term) with us, the following applies:

1. Subscriptions are taken out for a set term. The duration of the term is indicated in our store.
2. Upon the lapse of the agreed-upon term, the subscription is tacitly renewed, unless the subscription was cancelled by e-mail to support@marxact.com no later than 14 days prior to the end of the current term.
3. In the case of tacit renewal, the subscription term is extended by a term similar to the one it was initially taken out for.
4. In the case of cancellation, the subscription will run until the end of the current term or, should the notice period not have been observed, until the end of the following term. No subscription fee refunds may be claimed.
5. The initial subscription fee is paid in advance via our store. All renewals will be charged or collected via the payment method selected in the store. You grant us full advance consent and authorisation to have payment effected in this manner.
6. In case we do not receive the amount due in time, we may deny you access to the software until such time as the full amount has been paid.

Article 6: Risk

To the extent permitted by law, the risk associated with the goods to be delivered by us is transferred to you at the following moments: in the case of goods in stock, at the time they have been set apart for you; and with respect to all other goods, at the time the goods are loaded for transport to you or to the place designated by you.

Article 7: Guarantees and Service

1. We guarantee the quality of the materials used by us and their promised characteristics, as well as the correct working of the goods provided by us. For new products, this guarantee is valid for a period of twelve (12) months from the time of delivery. For goods procured by us elsewhere, we only provide a guarantee if and insofar as such is provided by the original manufacturer(s). For products that are not new a guarantee is only valid if and insofar as this has been explicitly agreed between us. The provisions of these Terms apply equally to such guarantee.

2. Should any of the goods delivered be defective, we will, at our exclusive discretion, either repair the defects or replace the goods, provided that the defects, in our opinion or that of the manufacturer, are attributable to construction faults or faults in or shortcomings of the materials used, causing the goods to not be usable by you for the purpose they can be reasonably be considered to serve.
3. Goods eligible for guarantee work must be sent to us carriage-paid. If the guarantee work is to be performed outside our own company, we are entitled to pass on the associated reasonable expenses to you to the extent permitted by law.
4. If, in our opinion, the goods tendered for rectification or repair exhibit no defects, all costs incurred will be passed on to you, even during the guarantee period.
5. All guarantee agreements lapse if you (i) make changes and/or conduct repairs to the product supplied yourself or allow such to be made or conducted; (ii) if the product supplied has not been or is not being used or treated exactly according to the supplied or applicable (manufacturers') instructions or the user manual, or is being used or treated injudiciously in any other way; (iii) if any party other than marXact has made a software change in or with regard to the product supplied; (iv) if the product supplied has been or is being used or applied for purposes other than for which it is intended; or (v) if the product supplied has been or is being used in a way which we in all reasonableness could not have expected.
6. No guarantee is provided for consumables.
7. If you fail to fulfil one or more of your obligations under our agreement or these Terms, we are released from our guarantee obligations.

Article 8: Permits etc.

1. Our equipment uses various frequency bands for purposes including, but not limited to, location tracking and the communication between the base station and the rover. The free use of these frequency bands is laid down on a national and/or regional level. You, the user, are yourself fully responsible for becoming familiar with the relevant legislation in this field before using our products. We are in no way responsible for your usage of the equipment and can never be held liable for any costs arising and/or damages suffered because of it. The frequency bands for each product are listed on our website or provided in the manual of the product concerned. The risk of not being able to use our equipment due to the lack of free/suitable frequency bands in the relevant region is wholly your own and such circumstance does not affect your other obligations, such as the payment obligations, under the Agreement.
2. The lack of any permits, concessions, licences, consents, etc., as referred to hereinbefore will be considered an attributable failure (breach) on your part and does not release you from any of your obligations to us, nor can it serve as a reason for the suspension of your fulfilment of your obligations to us.
3. You, as the user, are liable for all damage which may be caused, directly or indirectly, by the lack of any permits, concessions, licences, consents, etc., as referred to in this Article and you therefore indemnify us against any claims in connection with such damage.

Article 9: Payment Conditions

1. Unless otherwise agreed upon, delivery is effected once we have received your payment.
2. Should we have agreed that you will be invoiced for all goods supplied, such invoices must have been paid within 30 days from the invoice date. In case the invoice is not paid in time, you owe us default interest on the invoice amount to the rate of 10% per annum.
3. We are entitled to increase the net invoice amounts by a late payment surcharge of 3%. Such surcharge is not due if the invoice is paid in full within the payment term.
4. In case payment is not effected in time, the extrajudicial and judicial collection costs will also be charged on to you. The extrajudicial costs for each invoice will amount to 15% of the invoice amount, to a minimum of €150.
5. Lodging a complaint does not suspend your payment obligation. Our invoices must, then, be paid in time.

Article 10: Liability, Damage, and Indemnification

1. We are not liable for any derivative losses and indirect damage. Our liability is at all times limited to the direct damage and to insured events, up to the amount covered by our insurance, less any excess. Should we not have taken out liability insurance or not be covered by such insurance, our liability is at all times limited to the net amount invoiced for the case or in the event concerned. This provision does not apply in case the damage is caused by an intentional act or gross negligence of the marXact Board.
2. Direct damage is only understood to mean: (i) property damage as referred to in Section 3, Title 3, Book 6 of the Dutch Civil Code; (ii) reasonable expenses incurred to prevent property damage, insofar as you can prove that these expenses led to a reduction of the direct damage within the meaning of the agreement; (iii) reasonable expenses incurred by you to establish the cause and scale of the damage, insofar as the findings relate to the direct damage within the meaning of the agreement; (iv) reasonable expenses incurred by you to have our performance conform to the agreement.
3. We are 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 constitute direct damage as defined in the above.
4. If we aid you with the preparation or installation of the goods, without this being explicitly mentioned in the contract, such aid is provided wholly at your risk.
5. Without prejudice to the other provisions of this Article, every claim for damages lapses after one year from the time the damage has manifested itself or has been discovered or recognised or reasonably could have been expected to have been discovered or recognised, and, in all cases, after three years from the time of delivery.
6. With respect to goods we have procured from a third party, the (contract and/or guarantee) provisions applying to this transaction will also apply to you, if and insofar as we invoke them.
7. Should you change or modify any products delivered by us or on our behalf, our guarantees will immediately lapse.

Article 11: Reservation of Title

1. Until such time as you have fulfilled your obligations to us in full, we reserve the title to all goods supplied and to be supplied to you.
2. You are obliged to hold the goods supplied by or on behalf of us and that we reserve title to separately from all other goods in such a way that they can be easily and clearly identified as our goods.
3. You are entitled to sell or use goods we reserve title to within the framework of your normal business operations. However, no security interest may be created in these goods, and nor may any actions be performed with respect to these goods that result in them becoming a part or element of one or more other goods. Should goods we reserve title to be sold on, you are obliged to reserve title to them yourself and to cede, at our first request, all your claims against the debtor, up to the amount owed, to us.

Article 12: Force Majeure, Change of Circumstances

1. Should we, as a result of force majeure, be prevented from performing an agreement in part or in full, we will be entitled to suspend or terminate the agreement, without being liable for compensation, at our discretion and with no judicial intervention being required.
2. Should we be of the opinion that the situation of force majeure is of a permanent or long-term nature, the parties will consult in order to reach a settlement.
3. Our definition of force majeure includes, but is not limited to: Strikes, fire, breakdown of machinery and other business interruptions suffered by us or our suppliers, transportation disruptions, war, blockades, riots, epidemics, devaluation, floods and storms, as well as the sudden increase of import and excise duties and/or taxes, late delivery or non-delivery by our suppliers, failure to obtain the requisite licenses, and other government measures.

Article 13: Suspension and Termination

1. We are entitled to suspend or cease the (further) performance of contracts if you fail to fulfil your obligations to us in full and in time.
2. We are furthermore entitled to terminate the agreement without judicial intervention being required if you fail to fulfil your obligations to us in full and in time. We may also terminate the agreement if you become bankrupt or have been granted a moratorium. The same applies in case you cease, transfer, or wind up your business.
3. The consequences of the suspension, cessation and/or termination are wholly at your risk and expense, while you will also be responsible for the damage we suffer as a consequence of the suspension, cessation and/or termination.
4. Suspension, cessation and/or termination do not affect your already existing payment obligations.

Article 14: Intellectual Property Rights

1. The software, in the widest sense of the word, 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 us may not be duplicated or copied in any way.
2. Should it as yet become clear that any good we sold to you infringes on any third-party industrial or intellectual property right in the Netherlands and you are held liable therefor, you are obliged to immediately inform us thereof in writing. We in such a case have a choice between either procuring the right to be able to use the good; or altering the good, such that it no longer infringes on this right; or providing a replacement good which does not infringe the right; or recalling the good and refunding the purchase price upon receipt, subtracting reasonable compensation to cover the period when the good was available to you.
3. We accept no liability with regard to infringements of industrial and intellectual property rights outside the Netherlands.
4. We cannot be held liable in any way in respect of an 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 us, or which is the result of the use or application of such a good which is different from what was prescribed or assumed by us, or which is the result of its integration in, or use or application in combination with, other goods not sold or supplied by or on behalf of us, or which is the result of a software modification not performed by us.

Article 15: Confidentiality of Sensitive Information

We will treat your sensitive information in confidence and will not share any such information made known to us without your prior consent, unless we are obliged by law to do so. We expect that you treat any sensitive information about us you have become aware of in the same way.

Article 16: Further Provisions

All derogations from or changes of these Terms can only be agreed on in writing.

Article 17: Applicable Law and Disputes

Dutch law applies to these Terms and to all other agreements and arrangements concluded between us. The competent court in Utrecht has competence over any disputes. We reserve the right to submit a dispute to the judicial district in which you are resident or established.