

OmniAccess General Terms & Conditions



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Standard Terms and Conditions of Sale

Version No. 2.1 – APRIL 2018

THE TERMS AND CONDITIONS SET FORTH BELOW CONSTITUTE THE ENTIRE AGREEMENT BETWEEN OMNIACCESS AND CUSTOMER, UNLESS OTHERWISE AGREED TO IN WRITING BY OMNIACCESS. IN THE EVENT THAT CUSTOMER ISSUES ANY FORM OF ORDER TO OMNIACCESS AUTHORIZING THE PURCHASE OF PRODUCT(S), IT IS AGREED THAT SUCH ORDER IS ISSUED EXCLUSIVELY FOR THE PURPOSE OF CONFIRMING CUSTOMER'S PURCHASE OF THE SPECIFIED ITEM(S) AND THE PRICE(S) THEREOF AND THAT NO OTHER TERMS AND CONDITIONS SPECIFIED OR PREPRINTED ON SUCH ORDER SHALL ADD TO OR MODIFY THE TERMS AND CONDITIONS OF THIS AGREEMENT AND/OR ANY RELATED DOCUMENTATION PROVIDED WITH THE ITEMS PURCHASED, NOR SHALL SUCH ORDER TERMS AND CONDITIONS AFFECT EITHER PARTY'S RESPONSIBILITY TO THE OTHER PARTY AS DEFINED HEREIN. A CUSTOMER PURCHASE ORDER SHALL CONSTITUTE ACCEPTANCE OF OMNIACCESS'S OFFER AS SPECIFIED IN A VALID QUOTE. OMNIACCESS RESERVES THE RIGHT TO REJECT ANY PURCHASE ORDER.

1. TERMINOLOGY

As used herein "**OMNIACCESS**" means OMNIACCESS S.L, having its place of business at Parque Tecnológico ParcBit, Calle Blaise Pascal s/n, Edificio W, 2ª planta, 07121, Palma de Mallorca, Baleares, Spain, unless otherwise specified.

As used herein "**CUSTOMER**" means the purchaser of goods and/or services from OMNIACCESS identified in any Quotes or Service Agreements or Hardware Purchase Agreements referencing this Standard Terms and Conditions of Sale document.

As used herein "**Quote**" means a price submitted formally to the CUSTOMER in writing for the sale of hardware and/or software and any associated installation, configuration or other services as described therein.

As used herein, "**Purchase Order**" means the written authorization or Hardware Purchase Order to ship products at the Quoted price against the conditions stated in this document.

As used herein "**Product**" means any hardware, software, installation or maintenance service purchased and delivered to the CUSTOMER hereunder.

As used herein "**Service Agreement or Hardware Purchase Agreement**" means any separate agreement regarding the purchase or delivery of hardware, software, installation or maintenance service referencing this Standard Terms and Conditions of Sale document.

As used herein "**Agreement**" means this "Standard Terms and Conditions of Sale" document

2. PRICES, DISCOUNTS AND QUOTATIONS

All prices are excluding VAT and are subject to change without notice prior to receipt of CUSTOMER's Purchase Order (hereinafter referred to as "Purchase Order") and OMNIACCESS's acceptance of it. All invoice prices are those in effect on date of shipment, unless otherwise agreed to by OMNIACCESS in writing. All pricing information in published or printed material is provided for general information and estimation purposes only. Published prices are neither quotations nor offers to sell. Prices do not include applicable national or local taxes and, unless expressly identified and itemized, do not include freight, handling or insurance. All taxes applicable to Products ordered shall be paid by CUSTOMER, or in lieu thereof, CUSTOMER shall provide OMNIACCESS with a tax exemption certificate acceptable to the taxing authorities.

3. PAYMENT TERMS

If CUSTOMER fails to make any payment when due, OMNIACCESS shall, without prior notice or default letter and without prejudice to any other right or remedy available to it, be entitled to: (1) Charge interest on any unpaid invoice, automatically and without any previous notice, at the rate of Euribor + 3% and/or (2) Apply an immediate administrative surcharge of 3% to the unpaid invoice, automatically and without any previous notice and/or (3) Suspend any further deliveries to CUSTOMER whether under the same contract or under any other contract between CUSTOMER and OMNIACCESS.

4. SHIPPING AND DELIVERY

Shipping and delivery

CUSTOMER shall be responsible for all freight, handling and insurance charges. OMNIACCESS shall select the carrier unless otherwise instructed by CUSTOMER. In no event shall OMNIACCESS have any liability in connection with shipment, nor shall the carrier be considered an agent of OMNIACCESS. OMNIACCESS shall not be liable for damage or penalty for delay in delivery or for failure to give notice of any delay.

Risk and property

Unless mutually agreed otherwise in written by both parties in the Hardware Purchase Order, the products will be delivered to the CUSTOMER will be assumed to be under Ex Works (EXW) Incoterms 2000. Property of the products shall not pass to CUSTOMER until OMNIACCESS has received payment in full of the entire price including interest and any other possible amount due to it. Until property of the products passes to CUSTOMER, CUSTOMER shall keep the products separate from those of CUSTOMER and third parties. Until such time CUSTOMER shall not pledge or sell the products, nor shall it use them as a guarantee or other security.

Partial shipments

Unless expressly specified otherwise in the applicable Quote, CUSTOMER shall accept and pay for partial shipments of goods by OMNIACCESS.

Acceptance of deliveries

All shipments by OMNIACCESS will be accompanied by a delivery-note that clearly lists all items that form part of the shipment. The CUSTOMER shall upon receipt of the Products sign the delivery-note, whereby OMNIACCESS shall be entitled to assume that any person who both reasonably appears and claims to have authority to accept delivery who signs a note in respect of the Products on behalf of the CUSTOMER does in fact have the authority. Upon signing the delivery-note, the CUSTOMER declares to have received all listed items in good order, without any signs of missing, incomplete or damaged goods. In case OMNIACCESS ships items to the CUSTOMER using a 3rd-party expedited shipping carrier, the signing of the carrier's acceptance-papers by the CUSTOMER also constitutes an acceptance of the accompanying OMNIACCESS delivery-note.

5. CANCELLATION OF ORDERS

All Purchase Orders are considered fixed and irrevocable. The CUSTOMER may not cancel or modify a Purchase Order without the written consent of OMNIACCESS. If OMNIACCESS consents to CUSTOMER's cancellation or modification of a Purchase Order, CUSTOMER agrees to be responsible for and pay OMNIACCESS all costs, expenses and fees incurred by OMNIACCESS.

6. RETURN POLICY

No return shipment for items delivered to CUSTOMER will take place without prior written approval from OMNIACCESS. Such approval, when provided, must be in the form of a written Return Material Authorization (RMA), which must accompany the returned items. An RMA must be requested by CUSTOMER from OMNIACCESS within twenty (20) days from the original ship date. Items returned pursuant to the foregoing procedure may be subject to a restock fee, and CUSTOMER shall assume and satisfy in full. Returned items must be in the original sealed shipping conditions, undamaged, unused and unaltered. Equipment received without an RMA and or in a condition other than described entitles OMNIACCESS the right to reject return of the items and/or may be subject to additional charges which CUSTOMER agrees to pay. Opened software is not returnable. All shipments of returned items must be shipped prepaid by CUSTOMER to the warehouse location specified in the RMA. Upon receipt of the returned items, OMNIACCESS will inspect such items for compliance with the foregoing conditions for proper return. A credit for properly returned items will be entered against the original invoice for the ordered items. All RMA's issued are valid for thirty (30) days from the date the RMA is issued after which time the RMA will be cancelled.

7. EXPORTS

The ultimate shipment of potential orders solicited by CUSTOMER shall be subject to the right and ability of OMNIACCESS to make such sales and shipments under all policies, decrees, orders, laws, rules and regulations of the country of origin government and agencies and instrumentalities thereof in effect at the time of shipment of the Purchase Order, or which may be in effect thereafter, which govern exports or otherwise pertain to export controls.

Any order which has been accepted by OMNIACCESS but which cannot be fulfilled due to such policies, decrees, orders, laws, rules or regulations shall be considered to have been rejected when submitted to OMNIACCESS for acceptance or rejection. OMNIACCESS will inform CUSTOMER accordingly. CUSTOMER shall not transfer, directly or indirectly, any product or technical data received from OMNIACCESS or the direct product of such data, to any destination subject to export restrictions, unless prior written authorization is obtained from the appropriate government agency.

8. WARRANTY

OMNIACCESS warrants for a period of 1 year that the Products are free from defects in material and workmanship. Subject to the conditions and limitations set forth below, OMNIACCESS will, at its option, either repair or replace any part of its Products that prove defective by reason of improper workmanship or materials. Repaired parts or replacement Products will be provided by OMNIACCESS on an exchange basis, and will be either new or refurbished to be functionally equivalent to new. If OMNIACCESS is unable to repair or replace the Product, it will refund the current value of the Product at the time the warranty claim is made.

This limited warranty does not cover any damage to this Product that results from improper installation, accident, abuse, misuse, natural disaster, insufficient or excessive electrical supply, abnormal mechanical or environmental conditions, or any unauthorized disassembly, repair, or modification. This limited warranty also does not apply to any Product on which the original identification information has been altered, obliterated or removed, has not been handled or packaged correctly, has been sold as second-hand or has been resold contrary to export regulations.

CUSTOMER shall be unable to invoke any hidden defects unless he has notified OMNIACCESS by registered letter or email to support@omniaccess.com of hidden defects within thirty (30) business days following discovery and no later than twelve (12) months following receipt of the products by CUSTOMER which, unless otherwise determined in writing, is accepted to have taken place on the day of the shipment of the Product towards CUSTOMER. Any claim for non-conformity, apparent defects or hidden defects that is not made within the time-frame set forth herein shall be void. No claim shall be allowed by any other party than the CUSTOMER.

Transport costs for the replacement parts will be borne by the CUSTOMER; any subsequent and consequential costs (local (de) installation costs, customs duties, taxes, travel expenses, port-charges etc.) resulting from this will be for the account of the CUSTOMER. The CUSTOMER has the obligation to return the faulty & replaced equipment to OMNIACCESS by courier service, whereby the transport costs will be borne by the CUSTOMER and any subsequent import-costs (taxes, duties, customs clearance etc.) will be borne by OMNIACCESS.

If (at the sole discretion of OMNIACCESS) the malfunction of the Product(s) is found to be not covered by the warranty-terms, the CUSTOMER will be responsible for all foresaid costs involved (including the costs of replacement hardware components), and OMNIACCESS will be entitled to charge the CUSTOMER accordingly.

In all cases, OMNIACCESS's responsibility will be solely limited to replacement of part(s) that are malfunctioning. Under no circumstances will OMNIACCESS be liable for any costs resulting from the CUSTOMER seeking local technical support (and other resulting costs) during the process of identifying and solving the equipment malfunction, nor for any consequential damages that the CUSTOMER may have incurred due to the malfunctioning of any Product supplied by OMNIACCESS.

Failure of the CUSTOMER to have met the payment-obligations of any invoices that OMNIACCESS holds against the CUSTOMER (even if not related to the provisioning of the Products covered by this Agreement) will give OMNIACCESS the right to waive or suspend any warranty claims until the CUSTOMER has settled all open invoices in full (including any eventual interest and/or administrative surcharges).

In specific cases the warranty of products originally supplied by OMNIACCESS may be provided by the Original Equipment Manufacturer of the corresponding product. The CUSTOMER acknowledges that in such cases the responsibility for providing warranty services will be transferred from OMNIACCESS to the Original Equipment Manufacturer.

9. ONSITE SUPPORT AND WARRANTY REMEDYING

In cases where (at the request of the CUSTOMER) the verification, establishing or remedy of a malfunction of the Product(s) would require an on site visit by an OMNIACCESS support-engineer, the CUSTOMER acknowledges and accepts the fact that the CUSTOMER will be responsible for all incurred travel costs and lodging expenses (on a true-cost basis), even if the malfunction is covered by the warranty terms laid down in paragraph 8 of this Agreement, whereby the regular OMNIACCESS on site support arrangements apply:

- a. Unless agreed otherwise in advance, all travel arrangements will be made on the basis of coach and/or tourist-class airline seats. Lodging & subsistence arrangements will preferably be made on the basis of generally accepted standard accommodation.
- b. Eventual costs for any overweight (or separately shipped) luggage/parts and/or applicable customs duties will be charged separately at cost-price
- c. Costs for any special visa-arrangements, vaccinations and/or any other specifically required preparations (if applicable) will be charged separately at cost-price.
- d. Requests for assignments in destinations considered dangerous by the **Foreign & Commonwealth Office** may be declined or subject to additional costs. In principle assignments to areas that are subject to a negative travel-advisory of the FCO at time of travel will be declined, without such occurrences constituting a breach of OmniAccess' obligation to provide support to the Client.
- e. Any costs and/or cancellation-fees resulting from changes in the dates/times or venue of the assignment (or cancellation of the assignment) will be charged separately at cost-price.
- f. Any costs resulting from telephone/fax/data communications directly related to the assignment will be charged separately at cost-price.

OMNIACCESS has the right to ask the CUSTOMER for an upfront deposit equal to the estimated amount of these expenses. If an onsite support visit by (or on behalf of) OMNIACCESS would turn out to be regarding an incident that would prove to be outside the scope of responsibility of OMNIACCESS (as established at the sole discretion of OMNIACCESS), then OMNIACCESS will be entitled to charge the CUSTOMER for any onsite support provided. In such cases the regular daily onsite support service rate of € 1.250,- per day (excluding VAT, billable in full days) applies per man per day or part thereof from the day of departure from his Service station to the day of his return to service station. Travelling days will be invoiced at 50% of the full daily rate.

10. THIRD-PARTY SOFTWARE

Any third-party software provided under these terms is subject to the license terms that are provided with it.

11. NO MODIFICATION OR REVERSE ENGINEERING

CUSTOMER agrees that it will not modify, adapt, alter, translate, or create derivative works from any of the products purchased under the Agreement or derive, attempt to derive or direct others to derive the source code of any software product or the physical structure or technical properties of any other Product purchased under the Agreement by reverse engineering, disassembly, de-compilation or any other means.

12. OWNERSHIP OF ANY IP-ADRESSES USED FOR ANY SERVICE PROVIDED BY OMNIACCESS

Any IP-addresses that are used by OMNIACCESS for the provisioning of any services offered by any contract subject to this Agreement will belong solely to OMNIACCESS. The CUSTOMER acknowledges that OMNIACCESS will not be able (or required) to transfer or redirect any used IP-addresses to any other Internet Service Provider (ISP) if the CUSTOMER were to terminate any of the services contracted under the terms of this Agreement.

13. CONFIGURATION-FILES AND OTHER SOFTWARE & OTHER COMPONENTS OF PLEXUS NETWORKING PRODUCTS

The intellectual property-rights for any configuration-files as well as any other software components (such as –but not limited to– interface protocols, HTTP pages, VoIP configurations etc.) and any other materials such as system-manuals (whether generic or purpose-written for the CUSTOMER) solely remains with OMNIACCESS.

OMNIACCESS is under no obligation to provide access to (parts of) the configuration-files and/or source codes of any products and services provided under the terms of this Agreement. OMNIACCESS is under no obligation to provide firmware and/or configuration upgrades for any provided products.

14. USE OF PRODUCTS WITH STRONG ENCRYPTION FEATURES

Some of the products provided by OMNIACCESS may contain strong encryption features. The use and export of such features is covered by law, and it is the sole responsibility of the CUSTOMER (in his capacity as end-user of said products) to make sure that the applicable legal obligations and limitations are respected at all times.

15. FORCE MAJEURE

OMNIACCESS shall not be liable for any loss or damage resulting from any delay in delivery or failure to give notice of delay when such delay is due to any cause or event beyond OMNIACCESS control, including, without limitations, acts of nature, acts of terrorism, unavailability of supplies or sources of energy, riots, wars, fires, strikes, labor difficulties, delays in transportation, delays in delivery or defaults by OMNIACCESS' vendor or acts or omissions of CUSTOMER. In the event of delay due to any such cause, time for delivery shall be extended for a period of time equal to the duration of such delay and CUSTOMER shall not be entitled to refuse delivery or otherwise be relieved of any obligations as a result of the delay. If, as a result of any such cause, any scheduled delivery is delayed for period in excess of one-hundred-twenty (120) days, OMNIACCESS or CUSTOMER shall have the right by written notice to the other to cancel the order for the Products subject to the delayed delivery without further liability of any kind.

16. LIMITATION OF LIABILITY

Notwithstanding anything else herein, all liability of OMNIACCESS under this Agreement or otherwise shall be strictly limited to the money paid to OMNIACCESS under this Agreement during the six (6) months period preceding the event or circumstances giving rise to such liability. In case of damages relating to any allegedly defective or infringing product under any equitable theory the liability of OMNIACCESS shall be further limited to the purchase-price paid by the CUSTOMER for such product. In no event shall OMNIACCESS be liable for any incidental or consequential damages, even if OMNIACCESS has been informed of the possibility thereof.

17. ASSIGNMENT

The Agreement is not assignable by CUSTOMER and any attempt to assign any rights, duties or obligations arising hereunder shall be void.

18. GOVERNING LAW

Each transaction between CUSTOMER and OMNIACCESS made under the Agreement is governed by, and shall be construed solely in accordance with, the internal laws of the Kingdom of Spain. Any dispute which may arise out of this AGREEMENT and which cannot be settled in discussion or negotiation between the parties shall be settled by the courts of the Kingdom of Spain, unless the parties agree to arbitration. The venue is the City Court of Palma de Mallorca.

19. WAIVERS.

All rights and remedies of OMNIACCESS hereunder shall be cumulative and may be exercised singularly or concurrently. In the event that either party shall on any occasion fail to perform any term herein and the other party shall not enforce that term, failure to such enforce on that occasion shall not prevent enforcement of any term on any other occasion.

20. ENTIRE AGREEMENT AND AMENDMENTS

The terms and conditions herein constitute the entire agreement between the parties and supersede all previous communications, whether oral or written. Any changes to the Agreement may be made only upon mutual agreement of the parties in writing.



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