

# GENERAL TERMS AND CONDITIONS FOR SALE

## 1. PURPOSE AND CONTRACTUAL DOCUMENTS

These general terms and conditions for sale and service provision (hereinafter the "**General Conditions**") define the applicable terms to any hardware, software and services supplied by CENTREON SOFTWARE SYSTEMS SA - Suisse, a limited company (LLC), with a share capital of 1 300 0000 CHF, registered in Switzerland under number CH- 660.3.087.018-9, whose registered office is Rue du Cendrier 17, C/O LPG Genève Fiduciaire de Suisse SARL, whose IDE number is CHE-223-308-214, (hereinafter "**CENTREON**") to the client for his professional needs (hereinafter the "**Client**").

The General Conditions govern all order forms, cost estimates, commercial propositions and invoices issued in application hereby.

CENTREON and the Client are hereinafter referred to jointly as the "**Parties**" and individually as "**Party**".

The agreement (hereinafter the "**Agreement**") includes the following documents, which prevail in case of inconsistency, in the following order of priority:

- the order form(s) ;
- the license terms and/or the agreement for access to the support and software updates, as the case may be ;
- the General Conditions ;
- the commercial proposal of CENTREON, as the case may be.

This Agreement does not include hardware, software and services other than those specifically identified in the order form(s).

CENTREON reserves the right to modify at any time these General Conditions. In case of modification, the version in force at the time of contracting will apply.

The Agreement includes all rights and obligations of the Parties. It cancels and replaces all documents formerly exchanged between the Parties. The Parties expressly agree that the data recorded by CENTREON relating to the Agreement constitute the evidence of all commercial operations entered into between them. Retention of contractual documents is done on a reliable and long lasting support that can be produced as evidence.

## 2. ORDER

Orders may be done on-line on CENTREON's web portal or directly requesting CENTREON.

Any order implies the express acceptance without reservations by the Client hereof. Hardware, software and services supplied by CENTREON are described in each order forms and technical documentation. Any order is firm and final from the written order confirmation by CENTREON or the receipt of the detailed cost estimate established by CENTREON and signed by the Client.

The quotes and the commercial proposals of CENTREON are valid for thirty (30) days.

To process an order on-line on CENTREON's web portal, the Client is requested to create a user account and to that effect, needs to communicate to CENTREON necessary information. The Client may delete its user account at any time. The total price of any on-line order is due and payable upon order.

The Client undertakes to provide to CENTREON upon the first order its bank account details, a certificate of registration (K-bis), and, upon request by CENTREON and if the Client agrees, its last balance. CENTREON reserves the right to make the acceptance of the order conditional on the payment of the full price of the order or the provision of appropriate warranties by the Client.

Unless otherwise expressly agreed and subject to a compensation by the Client of the costs incurred by CENTREON, no change, suspension or cancelation of any order shall be enforceable against CENTREON from the written confirmation of the order by CENTREON or the receipt of the quote established by CENTREON and signed by the Client.

Any change of an order by the Client requires the prior written approval of CENTREON. CENTREON reserves the right to review applicable prices and schedule accordingly.

Any order cancelation by the Client leads to the payment of cancelation fees of twenty percent (20%) of the canceled order amount, including all taxes, without prejudice to the repayment by the Client to CENTREON of potentially incurred fees.

### **3. DELIVERY**

CENTREON can modify, at any time and without prior notice, hardware and software ordered to add any new technical development, which does not affect the quality of hardware and software and without price change.

The Client undertakes to accept delivery of hardware and software ordered upon first delivery as long as they comply to the order and technical documentation.

#### **3.1 Hardware**

At the request of the Client and subject to availabilities, hardware is delivered, on the choice of CENTREON, by post or by a third-party carrier or directly to the Client by CENTREON. Hardware is delivered to the address indicated on the order form or any other address agreed between the Parties.

The conditions and charges of carriage, delivery and insurance are set out on the order form.

Delivery is subject to availability. CENTREON reserves the right to proceed to partial delivery without any damages to the Client.

Hardware is delivered with the documentation of the manufacturer or the distributor, as the case may be. Such documentation may also be accessible from the manufacturer or the distributor's website.

#### **3.2 Software**

Software proposed by CENTREON are standard solutions developed to address the needs of a large number of users.

Software is provided to the Client in digital form by the Internet. Delivery is considered effective when CENTREON provides to the Client the activation key (token) corresponding to the order. At the explicit request of the Client and with additional charge, software can be provided on CD-ROMs.

### **4. TIMEFRAME**

CENTREON makes its best effort to comply with delivery dates indicated on the order form or agreed with the Client. However, delivery dates are indicative and no delay can excuse the cancelation of the order or lead to any damages.

### **5. RETENTION OF TITLE / TRANSFER OF RISK**

CENTREON retains the property of purchased hardware and software (including documentation) until full payment of the price which is the effective receipt by CENTREON of the payment made by the Client.

The Client shall not agree any deposit on purchased hardware under the retention of property, or use or resale them until full payment of their price to CENTREON.

In case of transformation or incorporation of hardware, the transformation or incorporated hardware becomes the property of CENTREON in proportion of the outstanding amount of the price due by the Client.

In case of receivership or compulsory liquidation of the Client, CENTREON can claim the property of hardware, in accordance with applicable law.

Unless otherwise agreed, the risk of loss or deterioration of hardware or software, as well as all damages caused, are transferred to the Client from their delivery to the sender, to the carrier or to the Client, as the case may be.

### **6. INSTALLATION**

If expressly included in the order form, CENTREON proceeds to the installation of hardware and software specifically identified at the address appearing on the order form or any other address agreed between the Parties. The installation assistance is limited to the connection of hardware with the Client's computer system and installation of Software, to the exclusion of any other service.

### **7. ACCEPTANCE**

The Client has the obligation to check the conformity of hardware and software to the order upon receipt and to notify any apparent defect to be considered. Except the case where CENTREON delivers hardware and software to the Client, any loss, missing or deterioration must be notified directly to the carrier on the order form. The Client undertakes to make any reservation to the carrier or to take appropriate action for preserving its rights. A copy of the order form is sent to CENTREON within three (3) days to justify such reservation.

In the absence of reservation, delivered hardware and software are deemed in conformity with the order.

No return can be effected without the prior approval of CENTREON. If the return is authorized, hardware and software are sent back to CENTREON at the costs and risks of the Client. The return of hardware and software does not excuse the Client of his duty to pay invoices in accordance with the contractual payment terms.

Returned hardware and software are, on the choice of CENTREON, replaced, returned in state or reimbursed within a reasonable period.

## **8. WARRANTY**

CENTREON warrants hardware under the conditions set out in the warranty terms granted by the manufacturer or the distributor, as the case may be. The Client reads and acknowledges the warranty terms prior to any order.

Unless otherwise agreed in the order form, the starting point of the warranty period is the one provided by the manufacturer or the distributor. This warranty is transferred to the Client who contacts directly the manufacturer or the distributor, as the case may be, excluding any claim against CENTREON.

Any intervention on hardware by the Client or a third-party, who is not authorized by CENTREON, leads to the cancellation of the warranty.

CENTREON warrants the conformity of proprietary software to its documentation. If software is delivered on CD-ROMs, CENTREON will replace the defective medium by a non-defective medium. CENTREON undertakes to correct reproducible defects of software within three (3) months of the date of delivery. The application of the provisions of article 1641 and subsequent articles of the French civil code are expressly excluded for software.

Any commercial warranty of CENTREON is stipulated on the order form. Any claim must be addressed to CENTREON by registered letter with an acknowledgement of receipt within three (3) days of the delivery, from the discovery of hidden defect or from the day where it should have normally been discovered, as the case may be. Any legal action taken against CENTREON, should, to be considered, be previously the object of an amicable claim and be initiated within six (6) months of such claim.

In any case, the Client can invoke the warranty only if hardware and software, which are used in compliance with the technical specifications and the usage regulations, are not modified and/or are not used with a hardware, a computer system or a program provided by a third-party, without prior approval from CENTREON.

## **9. FEES AND PAYMENT TERMS**

Hardware, software and services are invoiced at the price set out on the order form. Prices are set in accordance with the public tariff in force on the date of the order. The conditions to get a discount are defined in the public tariff of CENTREON.

The license-fees are invoiced either in Euros (€) or in US dollars (USD) or in Canadian dollars (CAD) or in Swiss francs (CHF) or in British pounds sterling (GBP), depending on the Centreon entity issuing these terms and conditions and on the geographical location of the client, the risk of a change rate is supported by the Client. All license-fees are exclusive of taxes (including in the case of source withhold), taxes being payable by the User at the rate and in the manner prescribed by applicable law. The price including all taxes is indicated on the order form and on the corresponding invoice.

The transportation, delivery, packaging (except standard packing), and insurance fees are supported by the Client and are also indicated on the order form. Bank charges are also at the expense of the Client.

The license fees are annually and automatically revised, on 1st January of each year, in proportion with the SYNTEC index on the basis of the application of the formula  $P = P_0 * S_1/S_0$ , in which P is the revised amount,  $P_0$  the initial amount or from the last reviewing,  $S_1$  the index value in force from the date of entry into force of the Agreement or at the last reviewing,  $S_0$  the index value for the considering year. If this index disappears, the Parties will substitute it with a replacement index. In case of dispute, a new index will be chosen by the Paris commercial court.

Any on-line order is fully payable upon processing of the order. In such case, the invoice can be accessed and downloaded on-line from the user account. The price of software depends on the duration of the subscription.

Alternatively, invoices are due and payable within thirty (30) days of the date of the invoice issue, net without any discount.

The payment of the service price is made in accordance with the schedule agreed between the Parties or yearly in advance for recurrent services.

Any payment by compensation is excluded. In the event the User fails to pay any undisputed invoice within thirty (30) days, the Client shall pay to CENTREON late payment interests, at the rate applied by the European Central Bank increased by ten (10) points, notwithstanding the payment of a fixed late payment indemnity of forty (40) CHF per unpaid invoice and the reimbursement to CENTREON of any collection expenses and any damages, which CENTREON could claim.

For public procurement contracts, in the event the Customer fails to pay any undisputed invoice within thirty (30) days, the Customer shall pay to CENTREON late payment interests, at the rate applied by BCE increased by eight (8) points, notwithstanding the payment of a fixed late payment indemnity of forty (40) CHF per unpaid invoice and the reimbursement of any collection expenses and without prejudice to any remedy available to CENTREON.

In addition, CENTREON reserves the right to suspend any pending order, and to terminate immediately without having to file any claim before the competent court to this effect ("*de plein droit*") and without prejudice to other remedies available for any damages suffered, the Agreement and/or part or all of the order and to request the restitution of the delivered hardware and software.

## 10. CONFIDENTIALITY

Any information provided by one Party to the other Party or to whom a Party has access during the negotiation and/or execution of the Agreement of any nature whatsoever (technical, financial, legal, commercial, strategic, computer-based) transferred either in material form (containing inside a physical medium of any form or nature whatsoever) or in immaterial form (verbally, digital or audiovisual media, etc.) is confidential.

Any information relating to hardware or software, the documentation, the commercial proposals of CENTREON, also to the commercial strategies and business processes of one or other of the Parties are notably considered as confidential.

The Parties undertake to keep confidential the aforesaid information and to apply at least the same provisions than those usually applied to protect their own confidential information, and must uphold the same obligation of confidentiality to all their employees of any position whatsoever for any confidential information as defined hereinabove.

The Parties acknowledge that the following information should not be considered as confidential:

- information that is in the public domain ;
- information previously known by the receiving Party, which is not subject to an obligation of confidentiality ;
- information lawfully obtained from a third-party or independently of the execution of the Agreement.

The provisions of this article remain in force during the term of the Agreement and for five (5) years from the expiration or the termination for any reason whatsoever.

## 11. INTELLECTUAL PROPERTY

The Agreement does not confer any right to the Client to use the commercial name and/or the trademark and/or the distinctive signs of CENTREON, even for commercial reference.

The Client acknowledges and admits that CENTREON and/or the third-manufacturers or third-publishers own and retain all intellectual property rights relating to hardware, software and services, considering that only a non-exclusive license on software could be granted to him.

## 12. PROTECTION OF DATA AND SYSTEMS SECURITY

The Client is solely liable of the back-up of any data that it processes or retains and acknowledges that it needs to perform regular back-up of data, to check the content of back-up and to use appropriate back-up media.

The Client is solely liable of the security of its IT systems and acknowledges that it is responsible for implementing a security policy specifically tailored to its operations.

In the event where CENTREON would act as data processor regarding to the Client personal data (the "Personal Data" as defined hereinafter), CENTREON undertakes to preserve security and confidentiality to these Personal Data according to clause 13 hereinafter.

## 13. PERSONAL DATA

For the purposes of this Agreement, "**Personal Data Regulations**" means the applicable French and European regulations on the protection of personal data, including: Law No. 78-17 of January 6, 1978 on data processing, files and freedom, as amended, EU Regulation 2016/679 of April 27, 2016 published in the Official Journal of the European Union on May 4, 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data applicable since May 25, 2018, Directive 2002/58/EC of July 12, 2002, known as "Privacy and Electronic Communications", as amended, as well as any other European statute that may amend or supplement the provisions in force at the date of this Agreement and that may apply to any of the Parties.

The Client retains the full control over personal data its processes as part of its activity and is liable, as data controller, in compliance with the provisions of the Personal Data Regulations.

In principle, CENTREON does not have access to personal data processed by the Client as part of its activity (hereinafter referred to as "**the Personal Data**").

However, as the case may be, for the performance of this Agreement, CENTREON may have access to these Personal Data (for example, in the event where CENTREON is configuring software on the instructions from the Client). In this case, CENTREON will act exclusively as data processor in the meaning of the Personal Data Regulations.

According to this, CENTREON will process Personal Data on behalf of the Client and on its instructions, for the sole purposes of allowing the Client to benefit fully from the hardware, software and services supplied by CENTREON, during the term of this Agreement.

The Personal Data processed by CENTREON on behalf of the Client shall be: first and last names, job, phone number, e-mail addresses and postal addresses of the persons concerned by the processing operations carried out by CENTREON on behalf of the Client.

The Client, in its capacity as data controller, hereby guarantees that the Personal Data it provides to CENTREON in this context is processed by it in accordance with the Personal Data Regulations.

It undertakes to document in writing its instructions concerning the processing of the Personal Data that it entrusts to CENTREON.

Generally, the Client undertakes to:

- Answer as quickly as possible to CENTREON's questions on the methods of processing of Personal Data, and in particular on the selection of any processors;
- Take into account CENTREON's advice on compliance with the Personal Data Regulations, and to consult CENTREON in the event of any difficulties;
- Promptly inform CENTREON of any claim or difficulty that may arise from a security breach in order to coordinate the response, and collaborate with CENTREON in this respect;
- Supervise the processing carried out on his behalf by CENTREON.

CENTREON, in its capacity as processor, undertakes to comply with its obligations under the Personal Data Regulations, and in particular to:

- Process Personal Data solely for the aforementioned purpose (to allow the Client to benefit fully from the hardware, software and services supplied by CENTREON);
- Process Personal Data in accordance with the instructions of the Client. If CENTREON considers that an instruction from the Client is in breach of the Personal Data Regulations, it undertakes to immediately inform the latter;
- If CENTREON is required, under Union law or French law by which it is governed, to transfer Personal Data outside the European Union, it undertakes to inform the Client of such legal obligation before the processing, unless the relevant law prohibits such information for substantial grounds of public interest;
- Guarantee the safety and confidentiality of the Personal Data processed, in accordance with the provisions of this Agreement and the Personal Data Regulations;
- Ensure that persons authorized to process the Personal Data are contractually bound to maintain confidentiality or are subject to a suitable legal obligation of confidentiality and receive the necessary training on the protection of Personal Data.

CENTREON shall be authorized to use subcontractor to carry out the following processing activities: consulting services.

The subcontractor(s) shall be subject to the same obligations as CENTREON.

CENTREON shall be responsible for ensuring that the subcontractor(s) provide sufficient guarantees as to the safety and confidentiality of the Personal Data, so that the processing meets the requirements of the Personal Data Regulations.

Should subcontractor(s) not fulfil its (their) data protection obligations, CENTREON shall remain fully liable to the Client for the performance by the other processor(s) of its (their) obligations.

Insofar as the Personal Data is initially collected by the Client, it is the Client's responsibility to provide information to the persons concerned by the processing operations carried out by CENTREON on its behalf at the time of data collection.

CENTREON shall assist the Client in answering requests regarding the exercise of the rights of access, rectification, deletion and opposition, the right to limit processing, the right to data portability, the right not to be the subject of an automated individual decision (including profiling).

When the relevant persons make a request to CENTREON to exercise their rights, CENTREON shall forward these requests as soon as it receives them by e-mail to the Client at the e-mail address provided by the Client to CENTREON.

CENTREON shall notify the Client in writing of any Personal Data breach within a maximum period of forty-eight (48) hours of becoming aware of it.

This notice shall be accompanied by all relevant documentation to enable the Client to (i) take all appropriate measures or instruct CENTREON to that effect, (ii) if necessary, to notify such violation to the competent supervisory authority.

The Client shall be responsible for informing the relevant persons, if required by the Personal Data Regulations.

CENTREON undertakes, as necessary, to assist the Client in carrying out a Data protection impact assessment.

CENTREON undertakes, as necessary, to assist the Client in carrying out the prior consultation of the supervisory authority.

CENTREON undertakes to implement the technical and organizational security measures necessary for the safety and integrity of the Personal Data it processes in such a way that the processing carried out on behalf of the Client meets the requirements of the Personal Data Regulations and guarantees the safeguarding of the rights of the relevant persons.

Specifically, CENTREON undertakes to implement the following security measures, as a minimum:

- User authentication (individual password, certificate, signature, etc.);
- Data backup;
- Business continuity measures (smoke detectors, fire extinguishers, etc.);
- Security of the premises (door locking, badges, etc.);
- Server security (administrator password, updates, etc.);
- Archiving;
- Protective measures in the event of data exchange (e.g. "https" protocol);
- Data encryption (enciphering);

Upon expiry of the Agreement, CENTREON undertakes, in accordance with the instructions of the Client, to:

- Delete all of the Personal Data that it has been required to process on the Client's behalf, subject to any applicable legal obligations; and/or
- Return all Personal Data to the Client, it being specified that the return must be combined with the deletion of all existing copies in CENTREON's information systems, unless applicable law requires the retention of the Personal Data. Once the copies have been deleted, CENTREON shall provide written evidence of the deletion.

The Parties undertake to provide each other with the name and contact details of their Data Protection Officer, if they have appointed one in accordance with the Personal Data Regulations.

CENTREON undertakes to provide the Client with the necessary documentation to demonstrate compliance with all its obligations and to enable audits, including inspections, to be carried out by the Client or any other auditor it may have appointed, and to assist in such audits.

In addition, insofar as CENTREON is required, within the context of the performance of this Agreement, to process the Personal Data of the Client (and/or of the Client's employees), it undertakes to do so in accordance with the Personal Data Regulations and to CENTREON's privacy policy.

#### **14. LIABILITY / INSURANCE**

The Parties expressly agree in case of any problem occurring in the provision of the Services to adopt a constructive attitude in order to solve the problem rather than to attempt to identify their respective liabilities.

CENTREON shall only be liable in case of proven breach and for damages that are directly resulting from such breach which are not covered by the infringement indemnity or a service credit. CENTREON is bound by an obligation of means.

In any case, CENTREON shall not be liable for any direct or indirect and/or immaterial damages suffered by the Client as a result of losses of profit, losses of customers, operating losses, disruption or cost increase of the Client's activities, losses of data, damage to reputation or other moral damages, even if CENTREON was aware of the possibility of such damages. CENTREON shall not be liable for non-consecutive immaterial damages.

As a decisive and essential term of the Agreement, CENTREON's aggregate liability to the Client for all damages and all other losses for any cause arising under this Agreement is limited to and will not exceed fifty percent (50%) of the order amount excluding taxes, when the liability is engaged, or the amount excluding taxes paid by the Client within the twelve (12) months prior to the event giving rise to the damage.

If the Agreement provides for the application of penalties, these are, unless otherwise explicitly agreed, exclusive from any other compensation that the Client could claim.

The aforementioned provisions do not apply to damages resulting from death or personal injury, caused by fraud, gross negligence or willful misconduct or any other type of liability that cannot be limited or excluded as a matter of law.

The Parties acknowledge that the price of the Agreement reflects the allocation of risks between them and the global economy of the Agreement and that limitation of liability is a decisive factor of their consent.

Each Party shall be insured by an insurance company that is known to be solvent for any damaging consequences of acts for which it could be held liable under this Agreement.

#### **15. TERM AND TERMINATION**

The Agreement enters into force on the date specified in the order form for the period agreed between the Parties.

The Contract is tacitly renewed for successive periods of a duration identical to that of the initial contract for recurring services (support, subscriptions, etc.) provided by CENTREON to the Client unless it is terminated by email and/or mail at least 3 months prior to its renewal date.

In the case of any breach by either Party of its obligations hereunder, this Agreement may be terminated by the non-breaching Party, without having to file any claim before the competent court to this effect ("*de plein droit*") and without prejudice to other remedies available for any damages suffered, subject to a thirty (30) day prior notice from the receipt of the acknowledgement of the registered letter, if the breaching Party does not cure its breach within thirty (30) days of the date of receipt of the failure notification.

The Agreement may also be terminated at each anniversary date by the Customer for convenience by giving 3 months notice.

In case of termination of the Agreement, the Client remains liable for the payment of all outstanding amounts until the effective date of termination, and more generally, for the payment of all invoices unpaid despite the effective termination.

## **16. COMMERCIAL REFERENCE**

Unless otherwise expressly agreed in the order form(s), the Client authorizes CENTREON to disclose its name as a commercial reference in its presentations, its commercial propositions, its commercial documentation, its website and to make reference to this Agreement. Any other type of communication shall be specifically subject of prior written approval of the User.

## **17. DEFAULT AND ACCESS TO THE SOURCE PROGRAMMES**

The Client may access to the work "*Centreon – Complete Solution*" whose IDDN number is FR.001.510037.000.S.C.2020.000.10200, which has been deposited with the French organization Agence pour la Protection des Programmes, in case of a judicial winding-up of Centreon SAS (the Centreon parent company), without assumption of Centreon's commitments in respect of the Client in the judgement pronouncing the termination of said winding-up; Access to the deposited elements shall take place in the cases provided hereinabove in accordance with the procedure for accessing the deposited elements of the APP.

Access to the deposited elements shall be authorised by the APP' Access Commission on presentation of the elements indisputably proving the judicial winding-up.

No access to the deposited elements shall be authorized in case of payment default by Centreon of any potential costs or fees it owes to the APP.

In case of access to the deposited elements, an identical duplication shall be made from the last update of the deposit, save express request made by the Client to access a prior deposit, by an officer of the APP. The costs related to the access procedure and to the duplication of the deposited elements shall be borne by the Client.

The Client may only use the deposited elements within the limit of the rights which have been assigned to it by Centreon, the access to the deposited elements shall not transfer any other right to the Client.

## **18. EXPORT CONTROL**

The Client may not use or otherwise export or re-export the Licensed Application except as authorized by French law and the laws of the jurisdiction in which the Licensed Application was obtained. In particular, but without limitation, the Licensed Application may not be exported or re-exported (a) into any French, European or U.S.-embargoed countries or (b) to anyone on the UE Consolidated List of persons, groups and entities subject to EU Financial Sanctions or to anyone on the U.S. Treasury Department's Specially Designated Nationals List or the U.S. Department of Commerce Denied Persons List or Entity List. By using the Licensed Application, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use these products for any purposes prohibited by French, European or United States law, including, without limitation, the development, design, manufacture, or production of nuclear, missile, or chemical or biological weapons.

The client furthermore acknowledge that in all cases it is prohibited from exporting, re-exporting, selling/or passing on or disclosing the software in all of the countries listed under the internet address given below, and that even activation of the software is, in all cases, prohibited in such countries:

<https://www.centreon.com/en/Centreon-embargoed-and-Sanctioned-Countries/>

## **19. FORCE MAJEURE**

CENTREON shall not, in any case, be liable and no indemnity can be requested for delay or in consequence of damages in the event of force majeure.

Internal or external strike, any destruction for any reason whatsoever of all or part of the CENTREON' premises or installations, any government decisions, any difficulties in oil and energy supply or traffic and communication networks disturbances, on which depend CENTREON, and more generally any unforeseeable event of human or natural origin that prevents or reduces the possibility of execution by CENTREON of its contractual obligations are expressly considered as constituting force majeure or unforeseeable circumstances, except those considered as such by Swiss court.

The event of force majeure suspends the execution of the Agreement and the current orders, except the obligation for the Client to pay the due sums until the date of force majeure.

If such force majeure event lasts for more than one (1) month, the Agreement could immediately be terminated at no cost immediately upon a registered letter with an acknowledgement of receipt, without having to file any claim before the competent court to this effect ("*de plein droit*").

## **20. MISCELLANEOUS PROVISIONS**

If any provision of this Agreement is held to be invalid or unenforceable for any reason, it will be deemed to be severed from this Agreement and the remaining provisions will continue in full force and effect.

The fact that one or other Party does not require, temporally or definitely, the application of a provision of this Agreement shall not be considered as a waiver of the rights, which are held by this Party.

Any exchange of postal or electronic mail between the Parties cannot modify this Agreement. Any change of this Agreement require an amendment signed by the Parties.

The Client may not sell, assign or transfer its rights or delegate its duties under this Agreement in whole or in part without prior written approval of CENTREON. CENTREON reserves the right to transfer this Agreement or all or part of its rights or duties under the Agreement to any transferee of its choice.

The Parties are independent contractor and shall not be considered agent of each other.

None of the Parties has the power to bind or commit the other Party.

## **21. GOVERNING LAW AND JURISDICTION**

The Agreement is governed by the Swiss Law, to the exclusion of the Vienna Convention on Contracts for the International Sale of Goods.

ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS LICENSE WHICH CANNOT BE SETTLED AMICABLY SHALL BE BROUGHT EXCLUSIVELY BEFORE THE DISTRICT COURT OF GENEVA , EVEN IN THE CASE OF A THIRD-PARTY PROCEEDING, A PLURALITY OF DEFENDANT OR A PROCEDURE FOR INTERIM MEASURES.

## **22. CONCILIATION PROCEDURE**

The Parties undertake to try to settle amicably any dispute before initiating any proceeding. To that effect, the claiming Party shall notify the other Party of the dispute by registered letter with acknowledgement of receipt. The Parties undertake to meet within fifteen (15) days from the receipt of the notification. Unless an agreement is reached within thirty (30) days from this first meeting, conciliation will be considered to have failed. Discussions during the conciliation procedure are confidential. In case of agreement of the Parties, the Parties will sign a written conciliation statement.

The Parties reserve the right to go through a mediation process or any alternative dispute resolution process that they will deem appropriate to their dispute.