

## CLOSE THE GAP'S GENERAL TERMS AND CONDITIONS OF SALE

### I. Definitions

1.1 In these General Terms and Conditions of Sale ("T&C"):

**Close the Gap** means Close the Gap International VZW, a non-profit association with registered office at Pleinlaan 2, 1050 Brussels, Belgium, VAT number BE 0860.353.772, enterprise number BE 0860.353.772;

**Applicant** means every individual, natural or legal entity that submits a Project Application Form, and coordinates and finances a Project;

**Beneficiary** means every individual, natural or legal entity that implements a Project and/or uses the Goods. The Applicant can be the Beneficiary or they can be two separate entities, in the latter case the Applicant supports the Beneficiary;

**(Legal) Relation** means the relationship between Close the Gap and the Applicant and/or the Beneficiary which exists or results from any agreement between the Parties, any modification or amendment to such an agreement, all (legal) acts in execution of such an agreement, the submission of a Project Application Form by the Applicant or any other act which is (in whole or in part) performed by the Applicant or the Beneficiary in order to obtain and/or use the Goods;

**Goods** means all ICT equipment in the broadest sense, such as desktops, laptops, monitors, servers, printers, peripherals and separate components of these Goods, which are offered by Close the Gap on its website ([www.close-the-gap.org](http://www.close-the-gap.org));

Close the Gap, the Applicant and the Beneficiary are referred to individually as **Party** and collectively as **Parties**;

**Project**: a Project, as defined under article 3.1, can consist of several orders of Goods;

**Project Application Form** means the document that must be used by the Applicant to submit a Project which it wishes to coordinate and finance; it is available on Close the Gap's website ([www.close-the-gap.org](http://www.close-the-gap.org));

**Product Information Document** means the document in which Close the Gap describes the Goods which it usually has in stock as well as the related prices. It is available on Close the Gap's website ([www.close-the-gap.org](http://www.close-the-gap.org)). This document is indicative only and does not bind Close the Gap;

**Refurbisher** means the third party appointed by Close the Gap for the testing and refurbishment of the Goods being offered.

1.2 The Incoterms 2010 are applicable as far as they are not inconsistent with the provisions of these T&C or with the provisions of any written agreements between the Parties. In the case of contradiction, these T&C and agreements prevail.

### II. Application of the T&C

2.1 The present T&C apply to all (Legal) Relations between the Parties, except in the case of a contrary written agreement between the Parties. The Applicant and the Beneficiary explicitly renounce the application of their own general conditions, even if these come after the present T&C. In order to be valid, each deviation from the present T&C must be subject to an explicit, prior and written agreement between the Parties. Should any other document stipulate other terms, such as brochures, pages on the website, etc. such stipulations shall never bind Close the Gap.

2.2 Any failure or delay by Close the Gap in exercising any right or remedy pursuant to these T&C will not impair such a right or remedy, will not be construed as a waiver of it and will not preclude its exercise at any subsequent time.

2.3 The Applicant and/or the Beneficiary accept these T&C by:

- Submitting a Project Application Form;
- Ordering any of the Goods in accordance with articles 4.3- 4.4;
- Explicitly accepting these T&C;
- Signing any document which refers to these T&C;

- Every other conceivable way which can be considered as a tacit acceptance of these T&C.

In any event, the Applicant and/or the Beneficiary will be deemed to have accepted these T&C if he/she does not object explicitly and in writing to these T&C at the registered office of Close the Gap or via e-mail ([info@close-the-gap.org](mailto:info@close-the-gap.org)) within 15 days after receipt of these T&C.

2.4 Close the Gap is allowed to appeal to third parties for the execution of its obligations to which these T&C apply. In this case, these T&C continue to apply to the (Legal) Relation between the Parties.

### III. Application and Acceptance

3.1 Close the Gap only takes into consideration Projects without any pursuit of profit, in particular socio-educational, health care, cultural, good governance Projects, excluding any commercial initiative. No profit may be made by the Applicant in providing the Beneficiary with the Goods.

3.2 Close the Gap will only consider Projects submitted by means of a Project Application form filled in by both the Applicant and the Beneficiary. The conditions contained in the Project Application Form are an integral part of these T&C.

3.3 Close the Gap decides independently whether it accepts or rejects a Project. Close the Gap will not be liable for any damage which might directly or indirectly result from a rejection. A Project is accepted only if confirmed in writing by Close the Gap.

3.4 The acceptance of a Project merely implies the right of the Applicant to order the Goods in accordance with the articles 4.3-4.4. In no event will such an acceptance imply a right to acquire the Goods for free, nor will it imply that Close the Gap has an obligation to accept an order placed by the Applicant.

### IV. Goods, Prices, Orders and Payments

4.1 All prices stated in the Product Information Document are merely indicative. The sales price will be the price mentioned in the pro forma invoice, which is accepted by the Applicant in accordance with article 4.4.

All prices are indicated in euros and exclusive of VAT. Unless otherwise agreed upon in writing, carriage charges, call-out charges, insurance charges, as well as any possible installation charges are not included in the purchase price. Any taxes and levies on the purchase price, as well as any other taxes or other charges arising between the time the order is placed and the time of delivery will be borne by the Applicant.

Close the Gap does not reimburse the VAT until the Applicant presents the export documents (EX-A + Confirmation of Exit) which prove that the Goods have definitively left the European Union. The Applicant is responsible for obtaining and presenting the valid export documents.

4.2 Before the Applicant orders any Goods, he/she shall be obliged to examine the Goods as regards their suitability for the use which the Applicant has in mind. The Applicant acknowledges that the Goods are not new, that they have previously been used by third parties and that the composition and components of these Goods could have been changed.

Descriptions, drawings, pictures, colours, measures, quantities and specifications of Goods offered by Close the Gap have been drawn up with due care with an eye to a similar delivery of the goods to the extent possible. The Applicant cannot use differences that occur, which do not differ substantially from technical specifications, against Close the Gap, unless expressly agreed upon otherwise in writing.

**4.3** After Close the Gap's Acceptance of the Project and confirmation of the Applicant that he/she has taken the necessary steps in order to ensure the transport and import of the Goods, Close the Gap provides the Applicant with a pro forma invoice based on the prices [cf. Product Information Document] which were effective at the moment of Acceptance of the Project.

The pro forma invoice serves merely as an invite for the Applicant to place an order. The content of the pro forma invoice shall be valid for 20 business days, during which period the Applicant must confirm its content and by doing so, place an order. In the case the Applicant explicitly confirms the pro forma invoice within the above period, the Applicant shall be bound by the subsequently drafted final invoice. Close the Gap reserves the right to refuse any demand of the Applicant, after the final invoice, for a modification of the order.

**4.4** All final invoices must be paid in a single payment by means of a bank transfer. The transfer costs are for the account of the Applicant. Payment must be made to the account number by the date specified on the invoice. In the case that no such date is indicated on the invoice, payment must be made within 15 business days after the invoice date.

## V. Delivery and acceptance

**5.1** Close the Gap will not deliver the Goods until the final invoice has been paid in full.

**5.2** The delivery time is the time which is necessary as from the moment of payment to prepare and deliver the Goods and can vary according to the circumstances, the specifications of the order and the availability of the services of third parties to whom Close the Gap appeals. The delivery times are merely indicative, do not bind Close the Gap and cannot give rise to any indemnification or cancellation.

**5.3** Unless otherwise agreed upon in writing, the Goods will be delivered EX WORKS (Incoterms 2010) at the premises of the Refurbisher in Belgium or the Netherlands. The Applicant is obliged to collect the Goods within 20 business days after the day on which Close the Gap informs the Applicant by e-mail that the Goods are ready to be collected. In the case that the Applicant fails to collect the Goods within this term, Close the Gap is allowed a daily compensation of 0.05% of the invoice amount (excl. VAT). In the case that the Applicant fails to collect the Goods within 30 business days after receipt of the notification that the Goods are ready to be collected, Close the Gap will be allowed to terminate the contract without prior notice and without any compensation being due. If such is the case, Close the Gap will without prejudice to its right to claim full compensation for the actual damage suffered, be entitled to an irrevocable fixed-sum penalty of 15% of the amount of the final invoice.

**5.4** Unless otherwise agreed upon in writing, the Applicant will be responsible for the transport of the Goods from the Refurbisher's premises to their final destination. The costs and the risk of transport are the responsibility of the Applicant from the moment he/she collects the Goods at the Refurbisher's premises. In the case that the Parties agree in writing that Close the Gap will be responsible for the transport of the Goods, the Goods will be delivered CIF (Incoterms 2010) to the Applicant.

In no event shall Close the Gap be responsible for the import of the Goods. Close the Gap cannot be held liable for any direct or indirect damage pursuant to import/customs clearance issues.

## VI. Conformity and guarantee

**6.1** Immediately upon collection or delivery, the Applicant shall examine the quality and quantity of the Goods. Visible defects or non-conformity of the Goods delivered with the order are to be communicated by e-mail to Close

the Gap ([info@close-the-gap.org](mailto:info@close-the-gap.org)) within 10 business days after collection/delivery at the latest, in the absence of which complaints will not be admissible. The use of the Goods by the Applicant or Beneficiary implies the Applicant's irrevocable acceptance of a lack of conformity of the Goods.

**6.2** Hidden defects of the Goods are to be communicated by e-mail to Close the Gap ([info@close-the-gap.org](mailto:info@close-the-gap.org)) within 10 business days after discovery of the flaw. Such complaints shall no longer be admissible 6 months after the delivery of the Goods. The use of the Goods by the Applicant or Beneficiary after discovery of the flaw implies the Applicant's irrevocable acceptance of a lack of conformity of the Goods.

**6.3** In the case of alleged non-conformity of the Goods with the final invoice, the Applicant will have to provide a list of the RFE numbers of the delivered goods, as well as photos of the Goods delivered. Until Close the Gap explicitly and in writing agrees with a return of the Goods, the Applicant will not be allowed to return the Goods. In the case that Close the Gap agrees with the return of the Goods, the costs of the return of the erroneous Goods as well as the costs of the delivery of the conforming Goods will be borne by Close the Gap. No other compensation or interest will be due by Close the Gap.

**6.4** In the case of visible or hidden defects of the Goods, and provided that the goods are covered by a carry-in guarantee, the Applicant will have to provide a list of the RFE numbers of the defective goods and will have to precisely and in writing describe the defect or problem affecting the Goods.

Close the Gap will only take into consideration those defects which are related to the structure of the Goods or to their functionality. The damage and defects which occurred for example during the transport of the Goods or which result from abnormal use of the Goods will not be covered by the guarantee and will remain for the account of the Applicant and/or Beneficiary.

Until Close the Gap explicitly and in writing agrees with a return of the Goods, the Applicant will not be allowed to return the Goods. In the case that Close the Gap agrees with the return of the Goods, the costs and the risks of the return of the defective Goods as well as the costs of the delivery of the conforming Goods will be for the account of the Applicant. No compensation or interest will be due from Close the Gap in the case of a delay of the delivery.

**6.5** The Goods delivered will be covered by the following guarantees:

- \* desktops, monitors and HP printers: 5% guarantee equipment is added free of charge to the order;
- \* notebooks: 6 months carry-in guarantee as from the delivery date;
- \* Others (servers, MFPs, etc.): the guarantee will be agreed upon in a separate contract between Close the Gap and the Applicant;

## VII. Software

**7.1** The Applicant and the Beneficiary must use the software installed on the Goods in accordance with the national and international regulations with regard to the protection of intellectual property.

**7.2** In no event can Close the Gap be held liable for any direct or indirect damage occurring from any abnormal, fraudulent or illegal use of the software, or any other use which unmistakably does not fall within the scope of the Project as accepted by Close the Gap. Use of the software for commercial or lucrative purposes is explicitly prohibited. Software licences have to be activated within 30 days of delivery. Close the Gap cannot be held liable for damage resulting from the use of expired licenses.

**7.3** In no event shall Close the Gap's liability include any incidental or consequential damage arising out of the use of the installed software.

### VIII. Services

Except for the delivery of the purchased Goods as such, all services provided by Close the Gap to help the Applicant with the development of a Project are mere courtesies.

### IX. Limitation of liability

9.1 Close the Gap is not responsible for the damage caused by the Goods if that damage is not only caused by defective Goods but also by a fault of the Applicant, Beneficiary or a third party.

9.2 Without prejudice to the Product Liability Act of February 25, 1991, Close the Gap cannot be held liable for the loss of life, physical injury and damage to health, except in the case of Close the Gap's wilful intent or gross negligence, fraud, deception or intentional fault in respect of Close the Gap.

9.3 Except in case of wilful intent or gross negligence, fraud, deception or intentional fault, Close the Gap's contractual and non-contractual liability vis-à-vis the Applicant is limited to the amount covered by the insurance. In any event, Close the Gap's contractual liability will be limited to the price of the contract from which the liability results, and Close the Gap's non-contractual liability will be limited to the amount of 10,000 EUR per claim, even in the case of gross error. In any event, Close the Gap's liability will be limited to 25,000 EUR for all claims that result from the same contract or the same cause.

9.4 Any claim of the Applicant vis-à-vis Close the Gap is legally null and void if the Applicant does not present his/her case to the competent court within a period of 6 months as from the date upon which the circumstance that serves as a basis for his/her claim became or should have become known to him/her.

### X. Privacy

Close the Gap will process the Applicant's and Beneficiary's personal data in accordance with the Belgian Act of December 8, 1992 on privacy protection as regards the processing of personal data.

### XI. Communication

Close the Gap reserves the right to communicate about Projects (e.g. via its website, annual report and press releases). The Applicant and/or Beneficiary must inform Close the Gap as from their first contact if they do not want their name or logo to be used by Close the Gap in its communication.

### XII. General Provisions

12.1 Within the scope of their relations, both parties accept proof by electronic means (e.g. e-mail, backup, etc.). The Applicant expressly accepts the use of electronic invoices within the meaning of Royal Decree no. 1 of 29 December 1992.

12.2 The Applicant cannot transfer its rights and obligations that result from its (Legal) Relation with Close the Gap to a third party without the prior approval of Close the Gap in writing. Close the Gap is allowed to appeal to third parties for the execution of its obligations to which these T&C apply.

12.3 Close the Gap can at any time unilaterally change these T&C, provided that it notifies the Parties and the Parties do not object to this change within 30 days after receipt of the notification. The new T&C will apply to all (Legal) Relations which arise after receipt of the notification and all existing (Legal) Relations to the extent that the rights and obligations resulting from these (Legal) Relations pertain to the period after the notification.

12.4 The Parties' contractual relations are governed by and must be construed and interpreted in accordance with the Laws of Belgium. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 is expressly excluded.

12.5 All claims must be submitted to the exclusive jurisdiction of the courts of Brussels, Belgium.

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