



1. Scope

1.1 These Essensium general terms and conditions apply to: (i) any proposal and/or agreement and/or purchase order (and – as the case may be – any amendment to it in either stage of the cooperation between the parties) sent to the Customer and accepted by Essensium ("Agreement") (and/or any document similar, related and/or added thereto, in the most broad sense of interpretation) ("Documents") relating to the **Essensium positioning system, including – for all completeness – the positioning system software**, including specific functionalities on warning, productivity and/or other functionalities to be agreed between the parties (the "System") sold by Essensium and purchased by the Customer and

(ii) the subscription to any related support, monitoring and maintenance services provided by Essensium, having its seat in Belgium, 3001 Leuven, Gaston Geenslaan 9, known in the RLE Leuven (Belgium) under company registration number 0872984063 ("Essensium") as from the date of the Agreement to the subject matter described sub (i) ("Services"), to a customer ("Customer") ("EGTCP").

1.2 A "Customer" means every company to who, either in writing or orally, Essensium sends a proposal, who places a purchase order with Essensium, with who Essensium intends to conclude a purchase agreement with regard to the purchase of the System including the provision of the Services.

1.3 These EGTCP and the related Documents shall form an integral part of the Agreement, which will constitute the sole and entire agreement between the negotiating and/or contracting parties unless otherwise agreed between the parties in writing. Parties may only explicitly deviate from the Agreement in writing.

1.4 The Customer's terms and conditions shall only apply if they are explicitly confirmed in writing by both parties prior to the execution of the Agreement. The application of these EGTCP is an essential condition for Essensium to conclude the Agreement.

1.5 The Customer declares to have received these EGTCP prior to the signature of the Agreement. The Customer has thus been able to take note of the EGTCP content and has accepted the EGTCP prior to the conclusion of the Agreement by means of its express written agreement to the EGTCP.

1.6 Should one or more provisions of these EGTCP be, in whole or in part, excessive or invalid, this concerned provision shall not entail the nullity of the remaining EGTCP. The contracting parties shall agree to replace the excessive or invalid clause by a legally valid clause, which shall correspond – as closely as possible – to the original intention of the parties.

1.7 Essensium and the Customer may, in addition to these EGTCP, make further special agreements regulating to the relationship between the parties. These are only valid and can only prevail over these EGTCP if they have been expressly agreed by both contracting parties in writing.

1.8 Essensium reserves the right to adapt or modify these

EGTCP at any time. Any change or modification of these EGTCP will only apply if the Customer has expressly agreed to that adaptation or modification. Any clauses of the EGTCP that have not been adapted or modified and that are explicitly accepted by the Customer will at any time remain in full binding force, notwithstanding such adaptation or modification.

1.9 This English language version of the EGTCP is the original version and in the event of discrepancies with general terms and conditions translated in other languages, these EGTCP in the English version shall always take precedence over any translation that will only be communicated for information purposes.

2. General provisions

2.1 The Agreement governs the sale by Essensium and the purchase by the Customer of the System listed in the Agreement as well as the Services. The subscription to the Services is mandatory as of the date of the Agreement. Said Services contain in general all support, monitoring and maintenance services, including the updates of the software embedded in the System. The Customer has purchased the System based on the Customer's specifications as described in the purchase order. The System will be delivered and installed (by a third party installer, not under the liability of Essensium) on the site as indicated by the Customer in the Agreement. Any changes to the site indicated in the Agreement where the purchased System will be installed will be priory discussed with Essensium. Essensium shall in no case take any liability for any consequence of the change by the Customer of the site where the System will be installed.

2.2 If either party believes that other matters beyond those covered in this document should be part of the Agreement, the parties will convene upon these additional matters in writing through the signature of an agreement/amendment, which agreement/amendment will explicitly refer to be integrated with the Agreement (including a.o. the EGTCP) ("Amendment"); otherwise, said eventual additional matters are not included as part of the Agreement for the purchase of this System and the provision of the Services.

3. Software license embedded in the subscription of the System and the related Services

The software integrated in the System is licensed by Essensium to the Customer based the subscription of the Agreement.

4. Title, risk of loss and delivery

4.1 The System shall remain the sole property of Essensium until the payment in full (price, interest and costs) for the System has been received by Essensium.

As long as the ownership has not passed from Essensium to the Customer, the Customer may not transfer, encumber or establish any rights or obligations on the System.

The provisions of this clause will remain applicable in the event of bankruptcy of the Customer.

Transport and delivery of the System sold to the Customer will be subject to the application of the INCOTERM EX WORKS®



(2020) which will apply. Freight and insurance for the shipment will be due by the Customer. If other Incoterms are agreed, Essensium will charge their additional expenses, increased with at least 5%, to the Customer with a minimum of 150,00 EUR per order transported.

4.2 Further to clause 4.1. of these EGTCP or unless explicitly otherwise stated in the Agreement, the System will thus be transported at the sole Customer's risk. The risk of loss passes to the Customer as soon as the System leaves Essensium's warehouse in Belgium.

All functionalities and specification of the System have been inspected and are functioning before the System leaves Essensium's site/warehouse.

4.3 The delivery terms (duration) in the order form or any other agreement due in the frame of the transportation of the System used by Essensium are only mentioned for information purposes and are therefore not binding unless explicitly agreed otherwise.

If conditions arise which prevent compliance with delivery schedules, Essensium will not be liable for any damage or penalty for delay in delivery, except when such delay is a sole consequence of Essensium's own willful misconduct or gross negligence or that of its subcontractors. However, Essensium will use all reasonable efforts to give notice of delays and to avoid any damages or penalties as a consequence thereof.

5. Complaints

5.1 The Customer must inspect the delivered System immediately upon receipt. Every complaint regarding the non-conformity or visible defects of the System must be reported to Essensium via email to support@essensium.com (burden of proof lays upon the Customer) indicating the motivation no later than three (3) calendar days after the said delivery.

5.2 Every complaint regarding hidden defects of the System must be reported to Essensium via email to support@essensium.com indicating the motivation within eight (8) calendar days after the determination of the hidden defect.

5.3 No valid complaint can be filed outside the above mentioned time periods.

5.4 A System can only be returned with prior written consent between the Parties.

6. Warranty

6.1 The System sold by Essensium and purchased by the Customer concerns solely a positioning system with the specific functionality as described in the purchase order, that is agreed under the Agreement and/or any connecting Documents, no other guarantees than guarantees that are a normal consequence of a positioning system shall or can be given.

Essensium cannot be liable if the Customer does not meet its obligations. In particular any and all stipulated specific obligations and conditions for installation and placement, repair, modification, application and handling, include and are not limited to: operating and environmental conditions (exposure to heat, coldness, outdoor air, moisture, humidity, required temperature ...), any type of certification (broad interpretation), technical re-

quirements, available power source and vibration.

6.2 Normal consumable or expendable parts and repairs (including reasonable installation costs), required during the warranty period because of abnormal use or conditions (such as but not limited to misuse, negligence or improper service by anyone except Essensium or its Authorized Service Provider), are excluded from this warranty.

6.3 In principle, being the situation of normal use of the System by the Customer, the warranty period for the System is two (2) years as from the date of signature/delivery to Essensium of the purchase order by the Customer. The warranty concerns normal consumable or expendable parts and repairs (including reasonable installation costs). The warranty period for spare parts is six (6) months after delivery (by Essensium) at the Customer site. Normal use in these EGTCP means: the use of the System in full compliance with the Documents. No warranty applies in case of abnormal use of the System.

6.4 The foregoing warranties overrule any other warranties, whether express or implied, including without limitation, any warranties of merchantability or fitness for intended or particular purposes.

7. Limitation of liability

7.1 Essensium shall not be liable for damages of any kind, except for its own willful misconduct or gross negligence or, when proven, that of its subcontractors, unless the parties expressly agree otherwise in writing.

7.2 Unless in the event of its own willful misconduct or gross negligence, Essensium will not be responsible to the Customer for consequential, exemplary or incidental damages (such as loss of profit or employee's time) regardless of the reason.

7.3 In no event shall the liability and/or obligations of Essensium under the Agreement or arising out of the purchase, rent, license and/or use of the System by Customer or others exceed the purchase price of the System.

7.4 The software embedded in the System and any updates that will be executed by Essensium from time to time during the entire duration of the Agreement, will be licensed "as is" and cannot be altered, changed, reverse engineered, copied, sublicensed and/or used in any way than as described in the Agreement.

7.5 Essensium will execute the Agreement to the best of its efforts in accordance with reasonable business standards.

8. Installation and service

8.1 The System will be installed at the site of the Customer or at any site indicated by the Customer, after the delivery by Essensium at the Customer's site, by an Authorized Service Provider (defined hereinafter) or the Customer itself, at the Customer's sole discretion. In case of new forklifts (being material handling equipment on which the System purchased by the Customer needs to be installed) the Customer and the Authorized Service Provider (defined hereinafter) will determine where the installation will take place. The installation will be executed by an authorized service provider, being a professional forklift installer appointed by the Customer ("Authorized Service Provider").

The installation is entirely executed by - and is at the sole liability of - the Authorized Service Provider. Essensium has the sole role of project manager and coordinator between the Customer and the Authorized Service Provider. Said Authorized Service Provider shall moreover provide any reasonable remedial and preventive maintenance which is required to keep the System in good operating condition during the warranty period of two (2) years, unless otherwise stated in the Agreement.

8.2 Essensium and/or its Authorized Service Provider may provide basic installation site information. The Customer will be responsible for having the installation site properly prepared before the System is installed. Essensium will consult with the Customer on any questions or issues regarding installation site preparation.

Essensium cannot be held liable for any of the services of - and provided by - the Authorized Service Provider. Unless in the event of Essensium's willful misconduct or gross negligence, Essensium shall have no liability on the installation of the System.

8.3 In addition to the installation charge(s), if any, as specified in the Agreement, Customer will arrange and pay for any special handling charges (including without limitation all costs of preparing the installation site and all storage, drayage, cranes, building modifications or other similar charges).

8.4 Installation Services will be performed by Essensium or its Authorized Service Provider during normal business hours.

8.5 Essensium, its Authorized Service Provider and Customer will cooperate to satisfy any Customer security requirements and still allow full and free access to the System.

8.6 Essensium will only accept responsibility in the event that damages are caused by the willful misconduct or gross negligence of its employees or designees while they are on the Customer's premises in the course of performing installation or servicing purposes.

8.7 In the contractual relationship between Essensium and the Customer, the application of article 5.90, paragraph 2 of the (Belgian) Civil Code is excluded. In said art. 5.90 of the (Belgian) Civil Code the law provides the possibility to the parties to terminate, in exceptional circumstances, an agreement prior to its termination date, it says: "In exceptional circumstances, the contract may also be terminated when it is clear that the debtor, after having been reminded to provide sufficient guarantees for the proper performance of his obligations within a reasonable period, will not fulfill his obligations in a timely manner and that the consequences of this non-performance are sufficiently serious for the creditor."

9. Price

9.1 All prices are expressed in euro (exclusive of VAT and possible excise duties or other taxes of any nature, as well as possible additional costs, such as transportation, packaging or delivery costs, where applicable), unless explicitly stated otherwise. Every increase of the VAT rate or possible other taxes between the order and performance are to be paid by the Customer, without any prior communication by Essensium.

9.2 Essensium retains the right to correct possible typing errors regarding the Agreement.

9.3 Essensium reserves the right to change the price of its System unilaterally if these price changes are the result of objective circumstances outside of its powers, such as a.o. and without limitation (i) a change to the information or data provided by the Customer or if such information should prove to be incorrect or incomplete and/or (ii) a change in VAT and excise duties, (iii) either substantial change of the component(s) costs. This list of objective circumstances is not exhaustive and is only used as an example. In case the reason for a price change would not be clear to the Customer, the Customer can request Essensium to explain the price change.

9.4 The delivered System remain property of Essensium as long as the complete purchase price has not been paid, even if the System is modified or converted.

9.5 Prices agreed between the parties further to the purchase of a System and related Services and still payable will be subject to indexation as from each January 1st (consumption index to be provided by the Belgian Government on <https://statbel.fgov.be/nl/themas/consumptieprijnsindex/consumptieprijnsindex#figures>).

10. Payment

10.1 Unless otherwise stated in the Agreement, invoicing terms shall be for the payment of the System purchased: (i) at order confirmation/acceptance of the purchase order by Essensium/signature Agreement (whatever applies): fifty percent (50%) of the price of the System agreed in the Agreement, (ii) upon delivery of the System by Essensium at the Customer's site: thirty percent (30%) of the price of the System agreed in the Agreement, and (iii) at the commissioning of the System: the remaining twenty percent (20%) of the price of the System agreed in the Agreement.

With regard to the payment of the Services related to the System: the Customer shall pay an annual subscription fee to Essensium, agreed upon in the Agreement. The first year of the annual Servicing fee will be invoiced to the Customer by Essensium after the first month following the confirmation/acceptance of the purchase order by Essensium/the Agreement (whatever applies) of the order on the purchase of the System. All following years of Services delivered will be invoiced on the anniversary date of the acceptance of the Purchase Order by Essensium.

10.2 Unless otherwise stated in the Agreement, payment terms shall be due within 30 days from the date of invoice.

10.3 On overdue accounts and without any action needed by Essensium, the Customer shall pay an interest at the rate of 10% per year, starting from the due date of the invoice. The invoice will also be increased by a fixed compensation equal to 7,5% of the invoice amount for late payment if the Customer has failed to pay the invoice before its due date. However, Essensium is entitled to claim a higher compensation if Essensium can prove that the damages exceed the abovementioned fixed compensation.

10.4 The Customer shall in all cases remain jointly and severally liable for the payment of the invoices of Essensium, even if Essensium has agreed to draw up the invoices in the name of third parties.



10.5 Invoices that are not objected to via an e-mail to finance@essensium.com (burden of proof lays upon the Customer) within eight (8) calendar days will be considered to be accepted and final.

10.6 In the event of non-payment of an invoice, all outstanding invoices, even those who are not already due and if applicable, will become automatically and without any notice of default due and payable.

10.7 In case of late payment of an invoice, Essensium reserves the right to disable the use of the System and to suspend its Services or – where applicable – any delivery of a System.

10.8 The Customer is never entitled to make deductions for guarantee or for any other reason, or to proceed to compensation regimes.

10.9 The Customer is not permitted to set off any claim that it has against Essensium against the claims that Essensium has against the Customer, unless Essensium has given prior written permission for this.

11. Export compliance

Customer shall not export, re-export, or otherwise transmit, directly or indirectly, any System except when it shall meet with all European and worldwide applicable export control laws and regulations. These obligations shall survive the termination of the Agreement.

12. Force majeure and hardship

12.1 Neither party will be liable to the other for delays in performing any obligations under the Agreement due to circumstances beyond its reasonable control, including but not limited to revolts, insurrections, riots, wars, acts of enemies, national emergency, strikes, floods, earthquake, embargo, inability to secure materials or transportation, and acts of God, and other events beyond the reasonable control of the parties caused by nature or governmental authorities ("force majeure"). In this case, the obligations of Parties will be suspended for the duration of the force majeure.

12.2 Essensium may, in the event of changed circumstances, request the Customer to renegotiate the Agreement if i) the changed circumstances make the performance of the Agreement excessively difficult, in the sense that normal performance of the Agreement can no longer reasonably be demanded, and ii) the change was unforeseeable at the time the Agreement was concluded, and/or iii) the change is not imputable to Essensium, and/or iv) Essensium has not assumed the risk and/or v) the law does not exclude this possibility. Changed circumstances include, but are not limited to, a change in legislation or established case law, an increase in fuel prices, an increase in raw materials, import or export restrictions imposed by a government, an increase in production costs, an increase in labor costs, an increase in energy prices.

13. Severability

If any provision of the Agreement is found to be invalid, illegal or unenforceable, then, notwithstanding such invalidity, illegality or unenforceability, the Agreement and the remaining provi-

sions shall continue in full force and effect. In this event the parties will agree upon a valid, binding and enforceable substitute provision which shall be as close as possible to the commercial interests of the invalid or unenforceable provision.

14. Dispute resolution

14.1 Customer and Essensium shall endeavor to resolve any controversy, claim or dispute arising out of or relating to the Agreement, or the performance or breach thereof, by negotiation.

14.2 Any claim that is not resolved by negotiation within thirty (30) days of notification shall exclusively be governed by and interpreted in accordance with Belgian law, excluding its conflict of law provisions. The applicability of the Vienna Sales Convention is expressly excluded.

14.3 In case of a dispute between the Parties, arising out of the performance, the validity or the interpretation of the Agreement, the Parties agree that these disputes shall be subject to the exclusive jurisdiction of the courts of Leuven (Belgium).

15. Change of control

Any change of control within Essensium, in any interpretation possible, will not have an effect on the continuity on the signed Agreements with its Customers. Delivery of the System and Services will continue in full force. The same counts in case of any restructuring within Essensium which might cause that delivery of the System and/or Services would be executed by another legal entity, to be appointed by Essensium.

16. Other

16.1 Both Essensium and Customer will comply with all laws applicable to the Agreement.

16.2 All notices given under the Agreement will only be effective when received in writing. Notices to the Customer and Essensium will be sent via e-mail to the CEO of Essensium (burden of proof lays upon the Customer) to the address provided in the Agreement which shall be interpreted being at the latest on the third business day following the sending date.

16.3 Changes or amendments to the Agreement must be in writing and must be priority signed by both parties.

17. Complete agreement

The Customer acknowledges to have read the Agreement, to understand the Agreement, and agrees to be bound by it and all EGTCP described therein. Further, the Customer represents and agrees that the Agreement set forth the complete and exclusive statement of the agreement including the governing terms and conditions between the parties, which shall prevail over and supersede all proposals, printed provisions on subordinate Customer documents including purchase orders, oral or written agreements, the Customer's general terms and conditions and all other communications between the parties relating to the subject matter of the Agreement.