ECOMSAAS GENERAL TERMS OF SALE

ARTICLE 1   OBJET

ECOMESURE is a company which provides its Clients with an online platform service package which enables measurement or instrument operability data to be displayed, with said data being processed, analyzed and stored in a dedicated and secure server; services provided also include warnings or alarms being sent, remote operation of the instruments connected and report generation (hereinafter 'ECOMSAAS'). Within the framework of ECOMSAAS services the relationship between the Client and ECOMESURE shall be exclusively governed by the general terms contained herein as well as the specific conditions concluded by the latter. The provision of equipment and consumables, either for sale or hire, shall be governed by the ECOMESURE general terms of sale and hire. All other documentation - even where issued by ECOMESURE - shall be deemed non-binding. It may not be derogated from the ECOMESURE general terms except via a written document which has been duly signed by an ECOMESURE representative with all due power to do so and containing explicit mention of said derogation.

The relationship between the CLIENT and ECOMESURE shall at all times be governed by the latest version of the terms and conditions in effect on the date of the order. CLIENT shall be notified of any changes to the terms and conditions via a notice being issued at least 30 days prior to their coming into effect. The general conditions below apply to all sales by ECOMESURE to the CLIENT of ECOMSAAS services whether directly or from its website http://www.ecomesure.com (hereinafter referred to as to "the Site").

ARTICLE 2   DRAFTING OF AGREEMENTS

2.1   Classic sales (non-Internet)

The Client shall be under obligation to notify ECOMESURE of its needs and to ensure the specifications as proposed by the latter are fully in line with its expectations. The Client shall therefore be deemed to perfectly aware of the services it is acquiring.

The commercial and technical proposal provided by ECOMESURE is an offer to enter into a contract (hereinafter 'Quote'). Except where explicitly mentioned otherwise in the Quote, said Quote shall be valid for three calendar months starting from the date it was initially issued by ECOMESURE.

The contract between ECOMESURE and the Client shall be entered into via the issuance of an order or acceptance by the latter of the Quote prepared by the former hereinafter (the "Contract").

Once this Contract has been concluded any cancellation thereof or amendment thereto shall be the subject of a separate prior written contract with ECOMESURE. Where no agreement is in place with ECOMESURE the contract may not be cancelled and the price is due in full.

2.2   Internet sales

The Client shall place its order on the Site, by using the online catalogue and form. In order for the order to be approved, the Client must accept these general conditions by clicking where indicated on the Site. Once the general conditions have been accepted, ECOMESURE will send a confirmation email in accordance with the conditions set out below.

The contract between ECOMESURE and the Client is formed when ECOMESURE accepts the online order placed by the CLIENT (hereinafter referred to as the "Contract").

Payment of the deposit or of the first instalment, as the case may be, is to be made by bank transfer.

All orders imply that the prices and the descriptions of the ECOMSAAS products have been accepted. Any dispute on this point shall occur in the event of an exchange and the guarantees mentioned below.

The provision of the Client's banking details online and final confirmation of the order constitute proof of the Client's agreement and of the fact that:

-     The amounts due pursuant to the purchase order are payable.

-     The completed transactions have been ratified and expressly accepted.

In the event of unauthorized use of the bank details, the Client is asked to contact [--] as soon as it becomes aware of such use.

ECOMESURE shall provide the Client with a copy of the Contract by email, confirming the parties' express agreement. The computerized records, which are stored on ECOMESURE's IT systems in reasonable security conditions shall be deemed to constitute proof of the communications, orders and payments made between the parties. The purchase orders and invoices shall be archived in a reliable and durable format able to be produced by way of proof.

ARTICLE 3   AVAILABILITY OF ECOMSAAS

ECOMSAAS provisions shall not include any material supply. The supply of equipment for connection to ECOMSAAS as provided by ECOMESURE shall be governed by the ECOMESURE general terms of sale.

Once the Contract has been formed, ECOMESURE shall email to the Client its personal access codes, consisting of a username and a password. The Client shall ensure maximum compliance with the license set out in article 6 below for all authorized access code users. The Client shall access ECOMSAAS using its own equipment and under its own liability. It should contract a communications service (i.e. internet access) which is compatible with ECOMSAAS. ECOMESURE shall not get involved with the communications service between the online platform and the equipment connected to it and may not be held liable in the event of a communication breakdown. In the event of such a breakdown the Client should get in touch with its telecommunications service operator.

ECOMSAAS is accessible online 24 hours a day, seven days a week. However, maintenance work may need to be carried out which may prevent access to ECOMSAAS, which the Client accepts. ECOMESURE shall undertake all reasonable measures as needed to limit any periods of inaccessibility and to maintain the continuous execution of its services.

3.1   The ECOMSAAS formula selected by the Client

The Client shall be provided a choice between various levels of services. Clients should select the level of services desired based on their needs.

•   **Data visualization, downloading and storage**

The measurement data collected by ECOMSAAS shall be processed and then made retrievable for the Client on the online platform, being stored by ECOMESURE or a service provider appointed to do so by ECOMESURE where the Client can view and download said data. Data shall be saved by ECOMESURE or a service provider as appointed to do so by ECOMESURE. They shall, by default, be held for one year starting from their being made available on ECOMSAAS. Upon the expiry of this period, ECOMESURE may make the decision to erase said data from its server or the service providers' server.

Data retrievable by the Client shall belong to the latter who shall then assume full responsibility, particularly with regard to content. The Client nevertheless authorizes ECOMESURE to use their data, particularly for the purposes of improving ECOMSAAS services.

Furthermore the Client expressly authorizes ECOMESURE to make copies of and/or extract data from Client data bases stored on the ECOMSAAS website for demonstration and/or marketing purposes, particularly on ECOMESURE's website.

•   **Operating status and remote viewing**

ECOMSAAS allows for the remote viewing of the operating status of the various Measuring Instruments.

•   **The implementation of operational alarms and threshold overshoot notifications:**

ECOMSAAS may send alarms to the Client in the event a measurement instrument starts malfunctioning. ECOMSAAS may likewise deliver alerts whenever threshold values for the measurements being carried out are exceeded. Alerts are delivered based only on thresholds as configured by the Client. ECOMESURE may not be held liable where the thresholds set by the Client are not actually in line with applicable regulations.

Operational alarms and threshold overshoot notifications shall be sent via e-mail - and possibly even SMS - to a limited number of end users as initially defined by the Client. The Client shall ensure the employees receiving these e-mails and SMSs have given their express consent for the receipt of said messages and guarantee ECOMESURE against any proceedings in this respect. The Client shall be solely responsible for the compliance of said notifications via e-mail and SMS with current legal and regulatory provisions on privacy protection and personal data.

•   **Automatic periodic reporting**

Weekly reports on measuring instruments operation can be automatically sent to Clients in .PDF format on the e-mail addresses defined by the latter. More specifically these reports may contain ECOMSAAS instrument connection rates (percentage of time for the current week the instrument in question was actually connected), daily averages and daily maximum figures per half-hour average rates.

•   **The generation of data analysis reports**

ECOMSAAS enables access to data analysis report publishing services (ECOMREPORT) on request.

•   **Provision of an API link (= Application Programming Interface)**

A RESTful-type API shall enable the Client to obtain data collected online on ECOMSAAS directly onto its own system.

•   **Simultaneous management of multiple instruments (VDI =Virtual Integrated Devices)**

A CLIENT that has several instruments connected to ECOMSAAS may manage them simultaneously according to the same reference time.

•   **Encryption of data registered on the platform**

The data collected on ECOMSAAS may be encrypted so that it may only be interpreted by the Client.

Any provision of services other than those set out herein (feasibility study, compatibility study, installation of equipment, training, installing ECOMSAAS on a Client's server, specific developments, on-going maintenance, etc.) shall be included in the Contract prepared by ECOMESURE. For each request for additional services which was not initially included in the Contract, ECOMESURE shall provide the Client with an additional quote.

Where the Client does not request an additional estimate then Services shall be provided at the current rate set by ECOMESURE on the date Client requested said Services.

3.2   Assistance using ECOMSAAS - Maintenance

ECOMESURE shall provide a customer service telephone line for the days and times listed below where Clients can receive any information or support for ECOMSAAS. To this end ECOMESURE shall provide Clients with a hotline open on working days which is accessible from Monday to Thursday from 8:30 to 12:00 and again from 13:30 to 18:00, with Friday's hours being 8:30 to 12:00 and 13:30 to 17:00 (hereinafter 'Service Hours'). The Client shall be notified beforehand of any extraordinary instances of closure of the hotline. An after-sales service (hereinafter 'After-Sales Service') may be contracted for the purposes of reporting incidents of any kind. Any support request placed outside the Service Hours will be dealt with during the next following Service period.

ECOMESURE shall undertake to resolve all Incidents as promptly as possible.

ECOMESURE should notify the Client in advance prior to any time the service is expected to be down owing to planned maintenance.

For instances of excessive use of the support services described above in article 3.21, i.e. where call statistics for the Client are considerably higher than the average for other clients with the same time of services, then ECOMESURE shall provide the Client with a quote for the purposes of providing the latter's employees with appropriate training on the optimal use of ECOMSAAS as well as an additional fee for the provision of said training.

ARTICLE 4   TIMETABLE

The indicative timetable for completion of the installation of ECOMSAAS is as included in the Contract. It begins to run from the formation of the Contract and, as the case may be, payment of the deposit or first instalment. Consequently any expiry of the timescales included in said Quote by ECOMESURE shall not give rise to any amendment of the price and/or terms of payment for ECOMSAAS and/or relevant Services. Furthermore and in any event, the Client may under no circumstances engage ECOMESURE's liability where this delay is due to Client negligence with respect to the delivery of elements which are required for ECOMESURE to carry out operations. The absence of any comments made by the Client within three working days following completion of the installation of ECOMSAAS and/or performance of relevant Services implies acceptance without reservation.

ARTICLE 5   Guarantees

ECOMESURE does not guarantee the suitability of the ECOMSAAS solution for any specific purpose, nor the performance thereof or other specifications which have not been explicitly stated in the Contract.

The following are likewise excluded from the guarantee: all consequences arising from the specifications as validated or accepted by the Client, all consequences of an act of negligence, a monitoring or maintenance defect, incorrect operation which is not attributable to ECOMESURE and/or usage which is not in line with the specifications.

ARTICLE 6   LICENSE TO USE

ECOMSAAS is protected by copyright as well as the following provisions.

Upon payment by the Client of the whole of the price set out in article 9 below, ECOMESURE duly grants the former a non-exclusive, non-transferable unlimited right of personal use to ECOMSAAS for the term of the Contract.

The right of use granted hereunder consists of the implementation and usage of ECOMSAAS by the Client for personal use.

The right of use to ECOMSAAS is exclusive to the granting of any other right and does not in any way entitle the user to any action which is not expressly authorized, particularly the right to copy, translate, adapt, rearrange or make any other such change to ECOMSAAS.

Furthermore the Client may not use ECOMSAAS for fraudulent purposes, attempt to connect to accounts other than its own, engage in a comparative analysis of the system via reverse engineering, etc.; the Client shall be prohibited from transcribing ECOMSAAS into any computer language or having ECOMSAAS transcribed by a third party.

In the event where the Client exceeds use as defined herein, the Client is liable to incur legal action for infringement.

The Client is prohibited from:

-     using ECOMSAAS specifications to create or enable the creation of a program with the same purpose;

-     disclosing the contents of ECOMSAAS without ECOMESURE's prior written consent;

-     assigning, leasing, subleasing or transferring its license of use to a third party.

-     not complying with the use of ECOMSAAS functionalities;

-     even partially amalgamating ECOMSAAS with other programs.

ARTICLE 7   TERM

The ECOMSAAS license for use is granted to the Client for the whole of the term the latter has paid for. Upon expiry the license shall be tacitly renewed for successive terms of one year, except where a written notification indicating a desire for the termination thereof is received within three months from the current expiry date.

Any breach of Contract by the Client prior to the expiry of the term of said contract shall automatically give rise to the payment of a penalty in the amount said Client would have paid up until the expiry of the contract plus 30%, any additional damages and interest ECOMESURE would be entitled to collect notwithstanding.

ARTICLE 8   PERSONAL DATA

In performing the Contract, ECOMESURE may be required to gather personal data on behalf of the Client, so that ECOMESURE may act as a sub-contracting personal data processor and the Client may be responsible for the processing of personal data.

The Parties shall comply with the applicable regulations and, in particular, with the provisions of the French data protection legislation ("*la loi Informatique et Libertés*") and the European General Data Protection Regulation (or "GDPR").

In so far as ECOMESURE acts in the capacity of a sub-contracting personal data processor within the meaning of the applicable personal data protection regulations, ECOMESURE shall:

- not use processed personal data, documents and information for purposes other than those specified in the Contract;
- only act on the documented instructions of the Client and shall immediately inform the Client if it considers that an instruction constitutes a breach of personal data protection regulations;
- ensure that the individuals authorized to process personal data shall respect confidential information or are bound by an appropriate equal duty of confidentiality;
- take all measures required to ensure the security and confidentiality of personal data and prevent such data from being distorted, damaged or communicated to unauthorized third parties;
- not use sub-contractors otherwise than in accordance with the provisions of Article 28 of the GDPR;
- implement all appropriate technical and organizational measures in order to assist the Client in performing its obligation to meet the requests of those persons who wish to exercise their rights in respect of personal data;
- assist the Client in ensuring that the obligations set out in Articles 32 to 36 of the GDPR are complied with;
- at the option of the Client, delete all personal data or restore it to the Client on termination of the Contract and destroy existing copies unless regulations require such data to be preserved;
- make available to the Client, upon request, any information required to demonstrate that the obligations under this Article have been complied with and to enable the Client or another authorized auditor to carry out audits, including inspections, and to contribute to such audits;
- notify the Client as soon as possible of any security breach in order to enable the Client to comply with its relevant obligations and in particular its obligation to notify the CNIL (the French data protection authority).

ARTICLE 9   PRICE

9.1   ECOMSAAS license for use

The price of the ECOMSAAS license varies depending on:

- the offer selected by the Client;
- the number of measuring instruments linked to the instance of ECOMSAAS in use by the Client;
- the length of the Client's commitment.

The amount for the ECOMSAAS license is payable in advance via bank transfer or direct debit per the schedule included in the Contract.

9.2   Increasing the number of Measuring Instruments connected to ECOMSAAS

The Client may decide, over the course of the contract concluded per article 2 above, to use ECOMSAAS for a greater number of measuring instruments than as initially set out in the Contract. In this case ECOMESURE shall provide the Client with an additional quote.

The Client is hereby notified that it may not in any way have reduced, over the course of Contract concluded per article 2 above, the number of Measuring Instruments connected to ECOMSAAS .

9.3   Review

During the term of the Contract prices shall be revised on an annual basis. Said prices shall be upwardly indexed using the current SYNTEC index per the following method of calculation: P1 = P0 x (S1 / S0) where: P1: revised price; P0: original contract price; S0: SYNTEC reference index used on the original contract date; S1: latest index published at the review date.

Where the index chosen ceases to be published, it shall then be automatically be replaced by the legal replacement or otherwise via a similar index as agreed between the parties. In the absence of upward indexing, the prices for the previous year shall be renewed.

Additionally upon each renewal of the contract pursuant to the provisions of article 7 prices for ECOMSAAS services may be revised by ECOMESURE. In this case the Client shall be notified of the new applicable financial conditions prior to their entry into effect.

ARTICLE 10   PAYMENT

10.1   Invoices are payable by bank transfer within thirty (30) days from the date of invoice. No discount shall be given for early payment. Any amount which has not been paid during the timescale shall incur interest at three times the French legal interest rate as well as the payment of a penalty in the amount of 40 euros for collection costs. Late payment penalties shall be payable from the first day of delay with no notice of default being required and shall accrue until the whole of outstanding payments has been settled, interest included.

10.2   The Client may not invoke any grounds whatsoever which would postpone or modify the terms of payment provided under the Contract, including any legal claims as to Service quality or non-compliance of Services. In the event of a default on payment within the timescale set out herein and 48 hours after the issue of a formal notice has proved to be unsuccessful, ECOMESURE shall be entitled to demand immediate payment of the outstanding balance owed as well as the suspension of the performance of its obligations without prejudice to demanding payment of damages and interest and/or the termination of the Contract per article 13 below.

10.3   The order placed on the Site with an obligation to make payment means that placing the order involves a payment by the Client. Payment for the order is to be by bank transfer only from the Client's bank account. The CLIENT must enter its bank details where indicated and confirm this entry by attaching its digital bank identity statement (RIB) to the purchase order. ECOMESURE reserves the right to suspend the order and any supply in the event that the officially approved bodies refuse to authorize payment or in the event of non-payment. ECOMESURE reserves the right to suspend access to ECOMSAAS and to refuse to complete an order from a CLIENT that has not paid for a previous order whether in full or in part or with whom there is an existing dispute over payment.

ARTICLE 11   ECOMESURE's liability

ECOMESURE's obligations shall be deemed to solely be obligations of means. The Client acknowledges and accepts the nature of ECOMESURE's services are evolutionary in nature, i.e. dependent on changes in technology, with ECOMESURE making every effort to adapt its service as best it can to these changes. The Client likewise acknowledges they have been notified access to ECOMSAAS is dependent upon the means of communication used which are outside ECOMESURE's sphere of obligations, the operation thereof not being connected to ECOMESURE in any way, shape or form. The Client is the sole party liable for the use of ECOMSAAS.

ECOMESURE may not be held liable for any malfunctioning of a third party GSM/GPRS/EDGE network, connectivity for said network (e.g. VPN) and/or the Client's equipment or systems as well as any other factor which may affect the quality of ECOMSAAS's performance and which is not under the direct control of ECOMESURE or any of its subcontractors.

Any claim brought by the Client with regard to ECOMESURE's good and proper performance of its contractual obligations should be duly justified and sent via registered post with acknowledgement of receipt and addressed no later than 30 days following the date the events at the heart of said claim were discovered.

Not following this procedure constitutes a waiver by the Client with respect to engaging ECOMESURE's liability.

In any event ECOMESURE may not be held liable for indirect loss or damage (moral or commercial damage, loss of data, loss of face, profit, revenue, orders or clientele) as may befall the Client. Furthermore in its dealings with the Client under no circumstances may ECOMESURE's liability exceed the amount paid by the Client for the previous twelve months' service or, where the contract has been concluded for a term of less than one year, for the term of said contract.

ARTICLE 12   CONFIDENTIALITY

Each party shall deem strictly confidential all information, data, formulae or any other designs belonging to the other party and shall be prohibited from disclosing said information etc. in any shape or form (in writing, orally or via magnetic or electronic media, etc.) starting with the Contract concluded pursuant to Article 2 (hereinafter 'Confidential Information) for a term of five (5) years starting the initial disclosure thereof.

Neither of the parties may disclose Confidential Information as relates to the other party without the express written consent of said other party and may not use said Confidential Information other than as part of the performance of the Contract. Each party should show the same degree of caution with respect to not disclosing the other party's Confidential Information as they would their own Confidential Information.

However ECOMESURE may, for publicity purposes, report on the contracts it has in place with the Client, it being understood that per the foregoing provisions of this article only the existence of said contracts may be mentioned, not the content thereof.

The following are not deemed to be Confidential Information:

(a) information which is generally available to the public or known by the latter;
(b) information which was previously known by the recipient;
(c) information which was independently developed by the recipient outside of the scope of the contract being concluded pursuant to article 2;
(d) information which has been legally disclosed by a third party or when giving witness before a relevant authority.

Both parties shall take, vis-à-vis their employees and partners, all of the measures needed to ensure the effectiveness of the obligation as mentioned above.

ARTICLE 13   TERMINATION/RESOLUTION

Each of the Parties shall be entitled to terminate the Contract with no prior notice required via registered post with acknowledgement of receipt:

- in the event of force majeure or any other similar events as defined in article 16.
- in the event where the other Party's non-compliance with or breach of obligations after fifteen days of attempting to remedy the situation remains unsuccessful.

Moreover ECOMESURE shall be entitled to prevent the Client using access codes and corresponding user accounts at any time and without prejudice in the event of a violation of the conditions of use as set out herein or in the event of a breach of security or confidentiality as part of the ECOMSAAS service management.

ARTICLE 14   INTELLECTUAL PROPERTY

ECOMESURE shall remain the owner of the intellectual property rights for ECOMSAAS and the Client acknowledges no intellectual property rights for ECOMSAAS shall be transferred to it.

The Client shall undertake not to either directly or indirectly, via any associated third parties, infringe on ECOMESURE's intellectual property rights. The Client shall undertake not to provide ECOMSAAS, its components or documentation, usernames and/or passwords either directly or indirectly to unauthorized third parties in any way, shape or form and for any reason whatsoever.

The Client shall ensure that all of the elements delivered to ECOMESURE as part of the initial provision of ECOMSAAS and services do not infringe on the intellectual property rights of others. The Client shall guarantee ECOMESURE against any consequences of any type (including court fees, legal fees, damages and interest and compensation, etc.) in the event where ECOMESURE's liability is invoked by a third party. The Client shall have no right to any trademarks, logos, text, graphics, images, audio or video files or any other copyrighted material contained in the ECOMESURE platform.

ARTICLE 15   SUB-CONTRACTING

To better manage operations ECOMESURE may employ select subcontractors.

ARTICLE 16   FORCE MAJEURE

Events of force majeure or unforeseen circumstances within the meaning of article 1218 of the French Civil Code Civil shall in the first instance suspend the parties' obligations. Upon the occurrence of such an event the parties shall endeavor in good faith to undertake all reasonable measures to carry out the proper performance of the Contract. If the events of force majeure or unforeseen circumstances continue for more than 90 days, this Contract may be terminated by either party, without either party being liable to pay damages to the other.

More explicitly, instances of force majeure or unforeseen circumstances in this sense may be defined as government action, extreme weather conditions, national disasters, fires, flooding and terrorist attacks, epidemics, extreme heat, humidity or cold or the severance of telecommunications.

ARTICLE 17   GOVERNING LAW - DISPUTES

All of the clauses contained within these terms and conditions as well as all contractual operations provided for herein shall be subject to French law.

Any dispute arising from the operations provided for herein shall be subject to the commercial court of Evry.

ARTICLE 18   WAIVER

No perceived act of forbearance by either party may be interpreted as a waiver of all rights granted hereunder, particularly any act of forbearance with respect to payment terms.

ARTICLE 19   PROOF

In the event of a legal dispute the parties duly accept that any faxes or e-mails shall be deemed to be original sources and may be used as conclusive evidence, duly waiving their right to contest this means of proof, except where contesting the authenticity thereof.