



## **TESMEC GENERAL CONDITIONS OF SALE FOR GEORADAR**

**September 2018 Edition – Rev.00**

1. **GOVERNING PROVISIONS AND DEFINITIONS.** These general conditions are applicable to any supply of GPR equipment, accessories, related devices manufactured by Tesmec S.p.A. (the “Goods”) and related services, if any (the “Services”), as better itemized in each purchase offer (the “Offer”). Each Offer shall be deemed open for acceptance for a period of 60 days, except a different period of validity is therein specified.

These general conditions and the special conditions contained in the Seller Offer or in Order Confirmation, as the case may be, make the sale contract applicable between the Parties for the supply of Tesmec Goods and Services (the “Contract”).

In case of contradictions, the special conditions in Seller Offer or Order Confirmation, as the case may be, will prevail.

These general conditions shall not be modified by any course of dealing or trade customs and usage. Any Buyer’s standard or special terms and conditions shall not apply. Cancellation, modifications and waivers of the Contract or any of the underlying rights or obligations shall not be effective without Seller’s written consent.

2. **PRICES AND PAYMENT CONDITIONS.** Published prices are subject to change without notice.

The price and the payment conditions are indicated in the special conditions. The payment of the price shall be remitted by the Buyer to the Seller’s business address. In case a down payment is agreed, the amount cashed shall be deemed as non refundable in case of Contract cancellation or termination.

If Buyer fails to make any payment on the due date, the Seller – without prejudice to any other right or remedy available - shall be entitled to charge the Buyer with interest at the rate as calculated according to art. 3, lett d) of the European Directive 2000/35/EC of 29 June 2000 on combating late payment in commercial transactions (e.i. the level of interest shall be the sum of the interest rate applied by the European Central Bank plus at least seven percentage points).

3. **DELIVERY – TRADE TERM – RISK OF LOSS.** Delivery dates are based on estimated manufacturing periods and shall not be deemed to represent fixed or guaranteed delivery dates, except expressly indicated in the special conditions. Seller’s delivery obligation is subject to timely payment of the price from Buyer.

Unless otherwise agreed, the delivery of Goods shall be Ex-works Tesmec Factory in Italy (Incoterm ICC Paris Ed. 2010).

All risk of loss and damage shall pass accordingly. The Seller shall be no way responsible for loss or damaging of the Goods if they occur after the passage of risk. The loss or the damaging of the Goods occurred after the passing of risks don’t relieve the Buyer from payment of the price.

4. **SERVICES.** If the special conditions include Services done by Seller’s technicians or third personnel charged by the Seller at the place of destination or at the job site, the Buyer shall bound its personnel and the one of the End Buyer or of the Contractor, if different, to co-operate with the Seller’s personnel and procure at its charge and without undue delay all the necessary tooling and special equipment for the prompt and successful execution of the above mentioned Services.

In a suitable time before the starting the Services, the Buyer shall provide to Tesmec After Sales and Service Dept.:

i) logistical information;

ii) applicable safety regulations and the risk assessment of the job site.

The Seller is not able to guarantee the timely performances of the Services if the previous information are lacking or not sent in due time.

5. **CLAIMS OF BUYER.** Buyer shall inspect Goods immediately upon delivery. Any claim must be made by Buyer in writing within 8 days of receipt of delivery, and all ascertainable defects and nonconformities shall be stated with particularity or be deemed waived. Under no circumstances shall Goods be returned to Seller without Seller’s written permission.

A claim that Goods are nonconforming shall not entitle Buyer to deduct any sum from any invoice unless such claim has been allowed in writing and accepted by the Buyer. All claims by Buyer are subject to the claims procedures set forth in Seller’s Warranty Conditions.

6. **DELAY OF THE PARTIES IN CONTRACT’S EXECUTION.** 7.1 In case of delay in delivery for which the Seller is responsible, and provided that the delivery date is expressly indicated as “binding”, the Buyer may request, after having summoned in writing the Seller, liquidated damages at 0.5% for each complete week of delay (7 days), starting from such delivery date or at the end of the grace period, if any.

The liquidated damages shall be calculated on the net amount of the Goods delayed; Services, additional transport freight and special packing other the standard one, if any are excluded. The liquidated damages total amount can’t exceed the 5% of the delayed Goods’ net amount and shall be deemed as a satisfactory and full reimbursement of all the possible damaged suffered by the Buyer, excluding any further claims.

Any delay caused by force majeure or by acts or omission of the Buyer (e.g. the lack of indications which are necessary for the manufacturing or for the supply of the Goods) shall not be considered as a delay for which the Seller is responsible.

6.2 In case of unjustified refusal from the Buyer to collect the Goods (totally or partially) the Seller shall be entitled to claim the cost for the Goods’ movements and storage.

7. **FORCE MAJEURE.** The Seller shall have the right to suspend performance of its contractual obligations when such performance becomes impossible or unduly burdensome because of unforeseeable events beyond its control, such as strikes, boycotts, loc-outs, fires, war, civil wars, riots, revolutions, requisitions, embargo, restrictions imposed by any governmental legislation, rules or regulation, energy black-outs, delay in delivery of components or raw materials. Should the suspension due to force majeure last for more than six (6) months, Seller shall have the right to terminate the Contract by a fifteen (15) days’ written notice Seller will be compensated for Goods or Services provided until that point, if any.

8. **CHARACTERISTICS OF THE GOODS - MODIFICATIONS.** Any information or data relating to the technical features and/or specifications of the Goods contained in catalogues, price lists, brochures and similar documents shall be binding only to the extent they are expressly referred to in the Contracts. Seller may make any changes to the Goods which, without altering their essential technical features, appear to be necessary or suitable

9. **MADE TO ORDER GOODS.** For any Good made to the order of Buyer, or in case the Buyer charges the Seller to study, design and/or manufacture a particular kind of component and/or technical solution, Seller shall have no responsibility for errors or variations in tooling, patterns, specifications, drawings, or designs furnished to it by Buyer.

10. **WARRANTY AND COMPLAINTS.** Tesmec S.p.A. (hereinafter Tesmec) warrants that the GPR Explorer 2.0 (hereinafter Product) is free of defects in material and/or workmanship, matching the technical level reached at the time of manufacturing.

The warranty begins on the day of the delivery of the Product - as resulting from the shipping document- and is valid for 365 days for any Buyer who takes delivery of the Product during this period.

The warranty is only effective if the claim for the defect is notified to Tesmec in writing within 8 (eight) days from its discovery, provided that the deadline of above are not expired.

At Tesmec option, the warranty consists in the repair of the faulty parts/components or replacement of the same with new or re-built parts/components, which are returned to Tesmec without alteration or further damages and which were defective or became defective during its normal use.

The replacement or repair of the faulty parts/components does not extend the terms of this warranty.

Products include specific data acquisition software (SW) licensed by the Manufacturer IDS Georadar S.r.l.. Tesmec does not warrant that the SW will meet Buyer's requirements, and under no circumstances does Tesmec warrant that the SW will operate uninterrupted or error free. The SW is provided "as is" without warranty of any kind. Tesmec warrants for a period of thirty (30) days from the delivery date - as resulting from the shipping document - that, under normal use, SW delivery media will be free of defects in material and workmanship as per the conditions set out in this International Warranty.

- a) The following activities will be covered by the warranty and will be free of charge for the Buyer:
- i. repair or replacement of the faulty parts;
  - ii. labor for replacement and repair;
  - iii. shipping costs from Tesmec factory to Buyer after repairs or replacement.

Works under warranty shall be carried out at Tesmec factories or at different location indicated by Tesmec After Sales Dept.

- b) The following activities will not be covered by the warranty and will be at Buyer's charge:
- i. all transport costs (and risks of loss) of the Product to a Tesmec facility or any suitable repair facility indicated by the After Sales Dept.;
  - ii. board, lodging and travel costs for the Tesmec technicians if the repair/replacement is not performed in the Tesmec factories or at a local authorized Tesmec dealer/workshop;
  - iii. local taxes and import duties, if any;
  - iv. consumables necessary for the repair/replacement (wheels, antenna box base, etc).

The warranty, as per point a), is not valid and will immediately elapse in case the defect or breakdown totally or partially, directly or indirectly connected to:

- i. use of the Product and accessories not in accordance with the Tesmec assembly, operation and maintenance manuals;
- ii. maintenance of the Product not in accordance with the Tesmec assembly, operation and maintenance manuals;
- iii. use of accessories, items or parts not sold by, authorized by, or recommended by Tesmec;
- iv. the use and /or installation of any component (both hardware and software) or materials, whether original or not, which is deemed by Tesmec in its sole discretion to be inconsistent with the Product's design or improperly installed;
- v. modifications of the Product carried out without prior written Tesmec authorization;
- vi. repairs carried out by personnel not authorized by Tesmec and/or not in accordance with Tesmec instructions;
- vii. any repair which is delayed in any way;
- viii. normal wear and tear of the Product;
- ix. negligent treatment, improper use or use of the Product in the manner which was not intended in the Product's use;
- x. opening of the Product without express written authorization by Tesmec.

c) This warranty does not include: batteries, SW and normal wearing parts (consumables).

d) This warranty does not apply, in any case, to second hand Products, unless different agreement written in the Sale Contract / Order Confirmation.

11. **LIMITATION OF LIABILITY.** In no event shall Tesmec be liable for special, indirect, incidental, exemplary, punitive or consequential damages including, but not limited to, loss of profits or revenue, caused by the purchase and use of the Products, except for gross negligence and fraud. Buyer assumes all risks and liability resulting from use of the Products purchased, whether used separately or in combination with other products.

12. **DISCLAIMER.** Buyer, before proceeding to the purchase and/or the setting up and using of the Product, is recommended to duly examine Tesmec documentation about the technical characteristics of the Products and manuals, in order to evaluate if the Product fit for the expected use and to carefully check their compliance with national laws and requirements, which may limit or even forbid their use (such as but not limited, to the approval of local Authority for operation of the Product in public area or roads; possible needs of a specific license for processing the data acquired; etc.)

Products include specific "Operational" software with automatic data processing and analysis tools. While every effort is made to ensure the accuracy of the information provided by those tools, the Buyer must be aware that the results provided by them may be not absolutely error free. Tesmec assumes no liability for any direct, indirect special, incidental or consequential damages or injuries caused by such reliance. Any person or entity who completely relies on information obtained from the automated data processing/analysis tools only, does so at his own risk.

13. **TRADEMARK AND INTELLECTUAL PROPERTY.** The Buyer cannot remove, cover or modify the trademark, labels, logos and signs found on the Goods upon delivery. Any Intellectual Property rights pertaining to the Goods and/or the Services shall remain a Seller exclusively right. Any form of reproduction, use and exploitation of the Seller's patents and know how is forbidden to the Buyer. In case of software embedded in the Goods, the Buyer is granted with a grant a perpetual, non transferable, license, without any additional cost to Buyer limited for the use and maintenance of the Goods, without any right to alter or revise such software.

14. **COMPLIANCE WITH LAW.** The Buyer is acknowledged that Tesmec S.p.A is a public company listed on the Italian stock exchange market and is subject, together with all other Italian Companies pertaining to its Group, to the Italian Law n. 231/2001 which provides for the criminal liability of the companies and associations because of certain offences committed by its management, employee or third parties for the benefit of the companies themselves. Such offences include, but are not limited to, fraud, embezzlement, bribery, crimes punishing the unlawful management of companies asset, shares and capital, market abuse crimes, death or injuries to due to non compliance with safety in working places laws, etc. To comply with Law n. 231/2001, Tesmec has made its commercial partners aware to have adopted a Code of Ethics, available on the website [www.tesmec.com](http://www.tesmec.com). Investors page, Governance's Section and an Organisational, Management and Control Model about prevention of Companies criminal liabilities. By dealing with Tesmec S.p.A. or any of its Group Companies, Buyer represents, warrants and agrees that Buyer share and is aware of the principles contained in the documents mentioned above and commits itself to desist from all practices which may lead to an infringement of the such principles. In the event such a violation is ascertained, the Seller has the right to immediately terminate each Contract by Buyer's default for gross negligence. Termination will occur immediately upon sending a written notice by the Supplier to the Buyer.

15. **MISCELLANEOUS PROVISIONS. *Entire Agreement and Severability.*** Each Contract for the sale of Goods and Services shall be deemed concluded upon Tesmec either receiving the Order Confirmation duly signed by the Buyer confirming in writing its order or starting the performance of such order by the Buyer. These General Conditions shall be deemed accepted by the Buyer also in case the Contract is executed by Tesmec starting to perform the order of the Buyer.

The invalidity of any one of the contractual provisions shall not affect the validity of the remaining provisions.

***Advertising.*** Buyer allows the Seller to put its name, logos and possible pictures taken of the Goods in the job site in Tesmec reference list and advertising materials, including web site, on the assurance that Tesmec will use them for marketing purposes *only*.

***Limitations on suits and actions.*** No action or suit to enforce Buyer's rights or remedies arising from each Contract or these Standard Terms and Conditions shall be commenced later than one year from the date of any actual breach by Seller.

16. **CUSTOMS REGULATIONS.** It is the policy of Seller to fully comply with any and all regulations in force at the moment of shipment, including the Export Administration Regulations, relating to the transportation, sell, delivery or shipment of goods. Seller is not responsible for the delay or failure of delivery of any good subject to this sale which is not permitted to be exported. Further, Buyer represents, warrants and agrees that Buyer has provided to Seller *all* information regarding the end-Buyer and final destination of the Good subject to each sale. Buyer understands and acknowledges that Seller will rely on the information provided by Buyer in making a determination whether to make application with the competent Authorities for an export license or approval and in making any application. Diversion, exportation or re-exportation contrary to applicable law is prohibited. Seller has the absolute right -- without any liability to Buyer -- to cancel any sale which Seller believes to be in violation of any export regulation.

17. **APPLICABLE LAW.** For what not expressly written down in these general conditions, each sale Contract shall be regulated by the uniform law provisions of the UN Vienna Convention of 11 April 1980 related to the international sales of Goods.

18. **DISPUTE RESOLUTION.** The Parties undertake to execute the Contract according to the principle of good faith and to use their best efforts to find an amicable solution to all and any disputes that might arise for the interpretation, execution, validity and enforcement of its provisions. If they are not able to reach a friendly settlement, the competent Court of the place where the Seller has its registered office shall have exclusive jurisdiction. However, as an exception to the principle hereabove, the Seller is in any case entitled to bring its action before the competent Court where the Buyer has its registered office.