

## TERMS OF SERVICES FOR THE KLAXOON ESHOP “ToSE”

(updated February 2<sup>nd</sup> 2023)

### Welcome to the KLAXOON Shop!

KLAXOON offers to its Clients an online KLAXOON Shop so that they can enjoy the KLAXOON Services.

### Article 1. Definitions

In these terms of services for Eshop (hereinafter, the “ToSE”), the terms referred below, in the singular or the plural, shall have the following meanings:

“**Additional Service(s)**” » means the additional services (*certification program, specific requests, etc.*) required by the Client and agreed between Parties.

“**Affiliate**” means any company controlled by a Party, controlling that Party or under joint control.

“**Client**” means a professional or consumer client (*private individual or corporate entity*) who has contracted with KLAXOON to subscribe Services. Some provisions of the ToSE shall be applicable only to either consumer or professional Clients and shall be indicated as such.

“**Country Specific Terms**” means specific terms applicable to Clients located in certain countries as described in Appendix 1.

“**Consumer Client**” means a natural and physical person, who is acting outside the scope of business as referred to under the Consumer French Law.

“**Contract**” means the present ToSE, the Order, KLAXOON’s privacy policy and the ToU applicable to the Services. In the event of any difference or contradiction between the provisions of the ToSE and the provisions of the ToU, the provisions of the ToSE shall prevail.

“**Data**” means any data generated in the Service by the Users.

“**Documentation**” means information related to the Services and its condition of use. This Documentation is accessible online at the following address: <https://help.klaxoon.com/hc/en-us>

“**DPA**” means the Data processing addendum describing the process of personal data and accessible at the following address: <https://static.klaxoon.com/website/pdf/dpa-en.pdf>

“**ToU**” means the terms of use for the KLAXOON Services accessible at the following address: <https://static.klaxoon.com/website/pdf/eula.pdf>

“**KLAXOON**” means the KLAXOON company, a french *société par actions simplifiée*, with headquarters located 3 avenue de Belle Fontaine à CESSON-SEVIGNE – 35510 (FRANCE), registered to the Trade and Companies Registry of Rennes under n°511 962 219, and its Affiliates.

“**Offers**”: means the Service offers available on the Website.

“**Order**” means an order for Services placed by the Client via the Website.

“**Party**” means KLAXOON and the Client.

“**Personal Data**” means any information relating to an identified or identifiable natural person who can be identified in accordance with the data protection law and regulation

“**Professional Client**” means a person acting in its scope of business.

“**SaaS**” means the connection mode « Software As A Service ».

“**Service(s)**”: means the KLAXOON Solution available in software as a service mode “SaaS” from the Website or any website operated by KLAXOON and any service ordered by the Client on the Website.

“**Subscription**”: means the subscription by the Client to KLAXOON Services.

“**Terminals**”: means any computer or communication terminal (such as a smartphone, an electronic tablet, a computer equipped with IOS, Android or Windows operating systems) for connecting to the Internet or to any mobile telephone network and supporting the latest versions of the main web browsers available on the effective date of the ToSE.

“**User**” means any person who has a User Account authorized by the Client.

“**User Account**” means the personal account of a User enabling access to the Service.

“**User Identifiers**” means the username (*non-generic email address*) and personal and confidential password of each User required to access the Service.

“**Update**” means the implementation of new minor functionality(s) provided by Klaxoon as part of the corrective and evolutive maintenance.

“**Upgrade**” means the implementation of new major functionality(s).

“**Website**” means the KLAXOON Shop accessible at <https://www.klaxoon.com>.

## **Article 2. Purpose**

The ToS are intended to establish the terms and conditions to order Service(s) through the Eshop platform.

## **Article 3. Acceptance of the Contract**

By ticking the box “*I accept the ToSE, KLAXOON’s Privacy Policy and agree to pay the amount of my Order*” before final validation and payment of the Order, the Client shall communicate its express and unreserved consent with respect to the ToSE and shall acknowledge the unreserved acceptance of the same.

## **Article 4. The Client’s Obligations**

Prior to the finalization of its Order, the Client declares having read the characteristics and features of the Services, the ToSE, the ToU, the content of the selected Offer.

The Client agrees to:

- provide KLAXOON, in a timely manner, all accurate, up-to-date and complete information and documents necessary to process the Order and provide the Services;
- pay KLAXOON the Price and/or fees agreed upon in the chosen Offer;
- use the Services in accordance with the ToU.

## **Article 5. Description of the Services**

### **5.1. Content of the Offers**

KLAXOON offers to its Clients a range of innovative Services allowing Data to be stored and exchanged when organizing and implementing meetings, training sessions and/or seminars. Such Services are accessible in SaaS mode via the Website and are subject to Subscription.

A detailed description of the Offers and Services is available on the Website.

Considering the high upgradability of KLAXOON technologies and KLAXOON's intention to continually improve the User experience, the Client acknowledges the range of KLAXOON Services is subject to improvement and evolution. Service enhancements are deployed in accordance with the provisions of articles 7 and 10 of these ToSE. The version of the Service granted to the Client is the latest version in production at KLAXOON. The Client can consult the version number on the Service interface.

## 5.2. Additional Services

The Client is informed that KLAXOON offers Additional Services such as training sessions and customer support, consulting services, partner program certifications, etc.

Subject to their availability, the Additional Services will be subject to the prior acceptance of a specific quotation and will be governed by the specific terms applicable to this Order.

## Article 6. Order

### 6.1. Order placement

Every Order is subject to an obligation of payment and implies the unconditional acceptance by the Client of the ToSE, the express waiver of any other prior document or exchange relating to the Order, or subsequent and not formalized by an express, written document signed by both Parties.

The Consumer Client acknowledges prior to the Order that it is familiar with the information on the essential characteristics of the Services (as described in Article L111-1 of the French Consumer Code) and their respective Prices.

When filling the Order form, the Client provides the mandatory information required for the processing of its Order, *i.e.* name, surname, address, phone number, company registration number (if applicable), VAT number (if applicable) and the type and number of Services.

The Client agrees to provide accurate and up-to-date information. KLAXOON shall not be held responsible for any potential data entry errors and their consequences.

Once the Client confirms its Order by clicking on the button displayed on the Website, the Order is confirmed and definitive.

If the Client suspends or abandons the ordering process, the Client expressly agrees that KLAXOON may contact the latest in order to provide assistance to finalize the purchasing process in accordance with the provisions of KLAXOON's Privacy Policy accessible at the following address: <https://static.klaxoon.com/website/pdf/eula.pdf>

The Order is registered upon confirmation of payment by the Client and subject to acceptance by the Client's bank.

The Order summary is displayed on the screen and the Order number is emailed to the email address previously registered by the Client.

### 6.2. Order cancellation

KLAXOON reserves the right to cancel an Order for any legitimate reason, in particular in case of:

- incorrect information provided by the Client when ordering Services;
- failure to pay that may or may not result from a denial of authorization from the payment center;
- more broadly, fraud or violation of the ToSE attributable to the Client.

## Article 7. Payment terms

### 7.1. Prices

The list and prices of the Offer are available to Clients on the price list accessible on the Website (the "**Prices**").

The Prices of Services mentioned in the Offer are:

- shown excluding taxes.
- those in force when the Order is confirmed by the Client and subject to the terms of the Contract; and
- shown all taxes included before validation of the Order by the Client.

The Prices do not include the fees and costs of purchasing Terminals and/or any telephone or Internet subscription from the operator chosen by the Client to use and access the Services.

The Prices do not include (i) the Additional Services subscribed upon dedicated request from the Client. Such Additional Services shall be covered by specific invoice by KLAXOON; (ii) the potential Upgrades provided by KLAXOON during the term of the Contract.

KLAXOON reserves the right to modify its prices at any time. Price changes are applicable immediately to any new Order. For Services in use, in the event of a price increase, the Client shall be informed in writing at least thirty (30) calendar days before the Contract renew. As a result, the Client will have, from this notification, a period of thirty (30) calendar days to terminate without penalty the Subscription, by registered letter with request for acknowledgment of receipt. Otherwise, the Client will be deemed to have accepted the new prices applicable to the Service.

## 7.2. Payment terms for Orders

Orders are paid on the Website by:

- **Credit/Debit card:** Visa, Eurocard-Mastercard, American Express.

Orders shall be paid upon final validation of the Order by the Client.

Upon payment, a request for authorization is issued to the relevant payment center. The acknowledgement and processing of all Orders is subject to the agreement of such payment centers. In case of rejected payment, the Order will not be accepted, and the Client will be notified by a message posted on the Website.

The Client guarantees KLAXOON that it has the necessary authorizations to use the method of payment it has chosen for its Order.

The Subscription will be paid by debiting the bank account associated with the credit card, the details of which were provided by the Client upon validation of the Order.

**Corporate Offer:** The terms and conditions of payment for the Services included in the Corporate Offer shall be agreed upon in the specific commercial offer sent by KLAXOON to the Client.

## 7.3. Proof of the transaction

The data recorded by the Website, the confirmation email received by the Client and the data recorded by the secure payment service provider constitute proof of the Order.

## 7.4. Late payments

When validating the Order or when renewing the Subscription, and unless in case of Client termination of the Subscription in accordance with Article 9.1.1 of the ToSE, KLAXOON will collect the amount to be paid for the new Subscription period using the Client's credit/debit card details provided when the Order was placed. In the event of failure, KLAXOON will send the Client a reminder e-mail inviting the latest to proceed to payment by using the hypertext link transmitted via this e-mail. In the event of non-payment within five (5) days following the first bank debit attempt, KLAXOON reserves the right to suspend access to the Service.

**Professional Clients and Consumer Clients:** In case of non-payment by the due date, KLAXOON reserves the right to suspend access to the Services and to cancel the Subscription, to keep as initial monetary damages the amounts already collected under the Order in question, without prejudice to any other monetary damages, if any, and any other remedies available to KLAXOON.

Suspension of the Service shall occur within ten (10) days following reception of a prior notice. This suspension shall not be considered as unavailable time of the Service as mentioned in Article 10.3 of the Contract.

## **Article 8. Right to withdraw (Consumer Only)**

The provisions of this **Article 8** are only applicable to Consumer Clients under the conditions set forth by the French *Consumer Code*.

Within the limitations set forth in Articles L221-18 et seq. of the French *Consumer Code*, the Client may cancel the Order within fourteen (14) days from completion of the Order for Orders for Services by notifying KLAXOON of its intention to cancel the Subscription.

**However, in accordance with the provisions of Article L.221-28 of the French Consumer Code, the Consumer acknowledges and expressly accepts (i) that the provision of Services or digital content via the Website begins immediately after the Order has been validated, i.e., before the end of the fourteen (14) day period provided for in Article L.221-18 of the French Consumer Code, and (ii) consequently accepts that he/she waives his/her right of withdrawal.**

## **Article 9. Duration and terms of use of the Services**

### **9.1. Subscription to the Services**

The Client has access to KLAXOON Services for the duration of Subscription specified on the Order.

The Subscription is automatically and tacitly renewed by successive periods of the same duration as the initial term, unless terminated before the end of the initial period or before each renewed period by the Client using (i) a registered letter with acknowledgement of receipt; or (ii) the “unsubscribed” option accessible via the Client’s dedicated administration console.

At the end of its annual Subscription, the Consumer Client will be informed by email of its ability to cancel the Subscription between one (1) and three (3) months before the end of the initial Subscription period.

#### **Consumer Client only:**

In accordance with the provisions of Article L.215-4 of the French *Consumer Code*, the Client is informed that:  
*For service contracts entered into for a fixed period with an automatic renewal clause, the professional service provider shall inform the consumer in writing, by registered letter or by email, no earlier than three months and no later than one month before the end of the period authorizing the rejection of the renewal, of the possibility of not renewing the contract it has entered into with an automatic renewal clause. This information, issued in clear and comprehensible terms, mentions, in a visible framed box, the deadline for non-renewal.*

*Where this information has not been sent to him in accordance with the provisions of the first paragraph, the consumer may terminate the contract free of charge at any time as of the date of renewal.*

*Advances made after the last renewal date or, in the case of open-ended agreements, after the conversion date of the initial fixed-term contract, are reimbursed within 30 days of the termination date, less the corresponding sums incurred in the performance of the contract up to that date.*

*The provisions of this article are without prejudice to those which legally submit certain contracts to specific rules regarding informing the consumer.*

If during the Eshop Subscription period, the Client and/or one of its User becomes eligible to a corporate offer, KLAXOON reserves the right to terminate the Eshop Subscription and transfer the User Account to the corporate offer account.

### **9.2. General terms of use**

The use of the Services is governed by the KLAXOON ToU available at: <https://static.klaxoon.com/website/pdf/eula.pdf>

The Client undertakes that when using the Service, each User shall be subject to the ToU.

The Service is accessible via the Website and requires the use of Personal Identification. The login credentials provided as part of the Service in SaaS mode are strictly personal, individual, confidential, and non-transferable.

When using the Service, the Client is solely responsible for the choice of the Services subscribed to, the nature of the information and files transmitted, distributed, or collected, their use and updates.

Each User Account is personal and non-transferable. Therefore, it cannot be shared or transferred between one or more Users. For privacy and security purposes, generic accounts (not specifically linked to a physical person) are prohibited.

KLAXOON reserves the right to verify, at its own expense, that the Client's use of Klaxoon licenses complies with the terms of this section. The Client agrees to reasonably cooperate with KLAXOON to allow the verification of the proper use of the Service. If the Client is found to be using the licenses in violation of the terms of this Contract, KLAXOON reserves the right to suspend access to the Service without the Client being entitled to claim for any compensation. KLAXOON will inform the Client prior to such suspension.

## **Article 10. Warranties - Maintenance**

### **10.1. Access to the Website**

The Service is made available to the Client "as is" without being the subject of specific adaptation measures. It is therefore the Client's responsibility to check that the Service is adequate for its requirements.

Due to the nature of the Internet and mobile telephone networks, KLAXOON cannot guarantee to the Client the continuous and permanent availability of access to the Website.

KLAXOON implement up-to-date security measures to prevent interruption of the Service. However, KLAXOON does not guarantee that the Website is free from anomalies, errors or bugs and that its operation is uninterrupted. Consequently, the Client is reminded it shall take all appropriate measures (*including regular backups*) to minimize the harmful consequences related to a possible interruption of the Service or possible loss of data generated by the Website due to its use.

The Client will take care to have a Terminal enabling access to the Internet and equipped with an up-to-date operating system.

KLAXOON does not guarantee the proper functioning of the Services on an obsolete Terminal or no longer supported by its manufacturer.

KLAXOON does not guarantee the accuracy of the data and information stored, hosted, displayed, disseminated and transmitted by the Client during the access to the Website, or whether they are current and/or complete.

The Client acts as an independent entity and therefore assumes all risks related to its activity. The Client acknowledges that it is solely responsible for the data which it creates, modifies, or deletes when using the Service.

### **10.2. Warranty for Services**

All warranties are excluded in the following cases: (i) the Services is used in a manner which does not comply with its intended use or with the Documentation (ii) the Service is combined with another product which results or not in an infringement of the rights of a third party, (iv) failure by the Client to install the Updates (*a definition of which is given below*) provided by KLAXOON or (v) force majeure.

### **10.3. Maintenance**

For the entire duration of the Subscription, KLAXOON shall provide the Client with technical assistance with a view to addressing problems in accessing the Website or in using the Service.

This service is accessible via various channels (phone, mail and webchat) depending on the option subscribed in the Order Form, and in any case, by email at [help@klaxoon.com](mailto:help@klaxoon.com) and webchat accessible directly via the Service.

KLAXOON shall make every effort to deal with the Client's request. KLAXOON undertakes to provide corrective maintenance for the Service free of charge for the duration of the Subscription.

As part of the provision of corrective maintenance, KLAXOON shall provide the Client with every available Update, automatically or in accordance with the procedures indicated in the Documentation or communicated to the Client by any other means. The Client undertakes to implement the measures necessary to ensure that it only uses the latest Update delivered by KLAXOON.

The corrective maintenance services apply to the last available version of the Service.

KLAXOON will provide its best efforts to ensure the following service level:

- 24/7 availability (98% annual availability).
- KLAXOON's integrated video conferencing Service availability up to 100 hours per month and per Subscription.
- Maximum file import capacity into Board: depending on the selected Offer.

	Africa, Europe, Middle-East	Americas	Asia- Pacific
<b>Support</b>	Monday to Friday, except holidays in France, from 8am to 7pm (Central European Time "CET")	Monday to Friday, except for U.S. holidays, from 9 a.m. to 6 p.m. (Eastern Daylight Time "EDT" and Eastern Standard Time "EST" zones)	Monday to Friday from 2pm to 12am, except French public holidays (Singapore time "SGT").
<b>Intervention time</b> for any technical problem on the Website or when using the Service (working hours)	2H	2H	4H
<b>Recovery time</b> in case of total interruption of the Service (working hours)	4H	4H	4H

KLAXOON will make available to the Client any Upgrade during the Subscription as indicated in the Documentation or communicated by KLAXOON to the Client by any other means. The Client undertakes to use only the latest Upgrade of the Service.

#### **Article 11. Intellectual Property Rights**

KLAXOON shall retain all of its intellectual property rights, such as in particular all trademarks, patents, utility certificates, discoveries, know-how, copyrights, neighboring rights, software, their documentation, interfaces and preparatory work, databases, database creator's rights, design, design patent, company names, trade names, signs and/or domain names (hereinafter the "**Intellectual Property Rights**") relating to the Website and Services, as well as to their interface and documentation.

The Client acknowledges and agrees that this Contract does not imply any assignment or concession in its favor of KLAXOON's Intellectual Property Rights, whatever they may be on the Website and/or Services.

KLAXOON holds or is vested with all the Intellectual Property Rights pertaining to the Service and grants to the Client, for its own use, a personal, non-assignable and non-transferable license to use its rights relating to the Service, to the exclusion of any other use, worldwide, and subject to the full payment of the relevant amounts due.

This license to use is granted for the entire duration of use of the Service.

The Service may incorporate third-party technologies belonging to other developers. The rights granted on these technologies are subject to observing the various rights and complying with the obligations which are imposed on the Client, and which are, if necessary, communicated to the latter in the Documentation.

As a result of the foregoing and without KLAXOON's prior written approval, the Client shall not, for itself or for a third party, reproduce, disclose, disseminate, distribute, represent, adapt, translate, modify, decompile, market, or sub-license of all or part of KLAXOON's Intellectual Property Rights, whatever its purpose, the medium considered, the duration, territory and resources used.

The Client and/or its User undertakes to:

- Login to the Service using only his/her User Identifiers;



- Keep the User Identifiers confidential and notify KLAXOON without delay of any theft or loss by sending an email at the following address: [help@klaxoon.com](mailto:help@klaxoon.com);
- Use the Service for its professional needs (internal organization, customer relationship and for any event carried out on its behalf). The Client prohibits itself to resale the Service, services based on the Service or incorporating all or part of the latter (with the exception of services provided by KLAXOON Partners duly certified or authorized for this purpose by KLAXOON);
- Not to infringe the copyright and/or to harm the image and/or to the reputation of KLAXOON;
- Not to recreate or to attempt to recreate, based on the information provided on the Website, a website and/or software whose purpose is to offer third parties, directly or indirectly, free of charge or subject to payment, the same service or a comparable service, and/or to circulate or sell, in any way whatsoever, information with the intention of assisting a third party to recreate, entirely or in part, a Website of this kind or an equivalent Website, software of this kind or equivalent software.

**Professional Clients** - The license granted to the User as part of the Subscription is personal and may only be reallocated to another User in the event of the permanent departure of a Client's employee.

If a claim is submitted to the Client regarding the infringement by the Service and/or Website of an intellectual property right, the Client undertakes to pass on directly to KLAXOON the details regarding such claim.

The Client is expressly informed and accepts that KLAXOON may, at its discretion and expense, either replace or modify all or a part of the Service and/or Website, or obtain for the Client a right to use on the condition that the Client has respected the following conditions:

- the Client has accepted and fulfilled all its obligations under the terms of the ToSE.
- an infringement action has been filed in a court of competent jurisdiction;
- KLAXOON is able to defend its own interests and those of the Client, and in order to do so, the Client collaborates loyally with KLAXOON by supplying all the elements, information and assistance needed.

Should none of these measures be reasonably conceivable, KLAXOON may unilaterally decide to terminate the right to use granted for the Services and/or Website and shall reimburse the Client for the payments made over the last twelve (12) months.

The provisions of this article define all KLAXOON's obligations regarding the infringement of patents and/or copyright resulting from the use of the Service.

The Parties expressly agree KLAXOON may use the Client's company name, trade name and logo as commercial references (or clients list) on KLAXOON's Websites and commercial documentation for the duration of the Subscription and 2 years thereafter.

## **Article 12. Privacy policy - Personal Data**

### **12.1. KLAXOON's privacy policy**

Before finalizing and validating an Order, the Client agrees to consult the Klaxoon Privacy Policy accessible at the following address: <https://static.klaxoon.com/website/pdf/privacy-policy.pdf>

The Client is informed that the ToU contain specific provisions regarding the processing of personal data.

### **12.2. Processing of Personal Data**

KLAXOON processes Personal Data as a data controller and as a data processor within the meaning of the applicable European Regulation on the Protection of Personal Data (GDPR).

KLAXOON's Personal Data protection policy is described in the DPA accessible at the following link: <https://static.klaxoon.com/website/pdf/dpa-en.pdf>

The Parties undertake, for their Personal Data processing operations, to comply with all legal and regulatory requirements in force with respect to the collection and processing of Personal Data, in particular EU Regulation n°2016/679 of April 27, 2016



known as the "GDPR" (hereinafter the "**Applicable Regulation**") when applicable (e.g.: keeping a register of processing operations, impact analysis, etc.) or any other applicable legal basis.

### **12.3 Cookies**

A cookie is a text file installed on an Internet user's computer when browsing an Internet site.

The use of the Service by access in SaaS mode requires the use of these cookies. Information about cookies in the form of a banner appears when you first connect to the Website.

The list of cookies and their purposes are available in the KLAXOON Privacy Policy accessible at the following address: <https://static.klaxoon.com/website/pdf/privacy-policy.pdf>

### **12.4 Security of User Identifiers**

Users' Identification are strictly personal, confidential and non-transferable. Their transmission to third parties and the consequences thereof are the sole responsibility of the Client.

In case of loss or theft of one of his Identifiers, the User can ask to reset the Identification by going to the Service access page, the procedure being followed by e-mail. The User also agrees to notify KLAXOON without delay and by any appropriate means to consider together the appropriate measures to be taken.

### **12.5 Data Security**

The servers/Website are recognized by a certificate validated by a trusted third party.

KLAXOON has a technical infrastructure and monitoring tools to ensure the security and integrity of the Client's Data in accordance with the state of the art and Applicable Regulations to prevent (i) the destruction, deterioration, modification or loss of Personal Data, (ii) the disclosure of or access to Personal Data, (iii) any form or purpose of unlawful processing of Personal Data that is not provided for in the Contract.

### **12.6 Backup and Reversibility**

KLAXOON undertakes to take all reasonable precautions to ensure the physical protection of the Data stored and/or exchanged in SaaS mode, in accordance with the state of the art and the Applicable Regulations.

KLAXOON undertakes throughout the duration of the Contract to make regular backups of the Client Data hosted on its servers.

However, the Client is informed that it remains responsible for any Data it creates, modifies or deletes via the Service.

Upon prior written request from the Client and subject to the technical feasibility of such request, KLAXOON undertakes to delete or anonymize the Data collected by KLAXOON under the Contract. Such a request shall be sent to KLAXOON at the following address: [legal@klaxoon.com](mailto:legal@klaxoon.com)

In any event, the reversibility procedure implemented by KLAXOON under the Contract does not include any assistance to the Client in the recovery of its data by a third-party provider.

Throughout the term of the Contract, the User may at any time and directly via the Service, delete or retrieve in a readable format, the Data collected while using the Service (user content). For more information: <https://static.klaxoon.com/website/pdf/eula.pdf>

## **Article 13. Liability**

### **13.1. The Client's liability**

The Client is solely responsible for:

- the use of the Services by the Client and/or by the Users of the Service legally bound to the Client in any capacity whatsoever (employment contract, provision of services agreement, one-time invitation, participants in a seminar, etc.);
- the access administration to the Services and to any interconnected service allowing the use of the Services.
- data that it creates, modifies, or deletes.

The Client shall ensure that the members of its staff, agents, corporate officers and any user of the Service, are trained for using Services and comply with the ToU applicable to the Services.

It is the Client's responsibility to take all appropriate measures to protect its Terminals, its own data and/or software from contamination by potential viruses circulating on the Internet or hacking from the Internet and to perform regular backups.

### 13.2. KLAXOON's liability

KLAXOON agrees to repair direct damages that may be sustained by the Client in case of non-execution or improper execution of the Order, due to its own actions or the actions of one of Affiliates and/or agents.

KLAXOON cannot be held responsible for indirect and non-material damages (*such as operating loss, loss of customers, loss of opportunity, etc.*), which is expressly accepted by the Client.

### 13.3. Limitations and exemptions from liability

It is recalled that the Client is solely and fully responsible for the use of the Website and the Services in accordance with the legal provisions, this contract and the ToU.

Consequently, KLAXOON shall not be responsible for any damage whatsoever, in case of:

- (i) Client's errors or omissions in the Order process.
- (ii) damages resulting from fraudulent or illicit access to the Website due to the Client's negligence.
- (iii) failure to pay Orders by the Client.
- (iv) intervention of a third party not previously authorized by KLAXOON to operate on the Services.
- (v) any difficulties in accessing the Website due to a technical maintenance intervention required to ensure full-service operation and/or a data update.
- (vi) Client's consultation of Third-Party websites from any hypertext links posted on the Website; or
- (vii) force majeure.

The Client acknowledges that connection to the Website and the Services is via the Internet or a local computer network or any other communication protocol compatible.

Accordingly, it is expressly agreed between the Parties that:

- it is the Client's responsibility to take all necessary steps to maintain this access.
- the Client is aware of the technical risks that may affect these networks and protocols and cause slowdowns or unavailability making connection to the Website and/or Services impossible.
- KLAXOON shall not be held responsible for malfunctions and difficulties in accessing and/or using the Website and/or Services due to disturbances to the Internet network, local computer networks or in case it is impossible to access the Website and/or the Services due to an event beyond its control.

IN ALL CIRCUMSTANCES AND EXCEPT PROHIBITED BY LAW, IT IS EXPRESSLY AGREED BY THE PARTIES THAT THE TOTAL, FOR ALL CAUSES COMBINED, OF THE COMPENSATION, DAMAGES AND COSTS OF ALL KINDS WHICH MAY BE ASSUMED OR PAID BY KLAXOON FOR THE BENEFIT OF THE CLIENT, SUBSEQUENT TO A DEFINITIVE DECISION RENDERED BY A COURT OF COMPETENT JURISDICTION, CANNOT EXCEED AN OVERALL MAXIMUM AMOUNT, FOR ALL DISPUTES COMBINED, EQUAL TO THE AMOUNTS PAID BY THE CLIENT TO KLAXOON (EXCLUDING TAXES) UNDER THE TERMS OF THE DISPUTED ORDER OVER THE LAST TWELVE (12) MONTHS PRIOR TO THE OCCURRENCE OF THE EVENT GIVING RISE TO THE LIABILITY.

**FOR CONSUMER ONLY: WHEN THE CLIENT IS A CONSUMER, IT IS LIKELY TO BENEFIT FROM THE MANDATORY AND PROTECTIVE LEGAL PROVISIONS OF THE COUNTRY IN WHICH HE/HER RESIDES. THIS LIMITATION OF LIABILITY CLAUSE IS NOT INTENDED TO DEPRIVE THE CONSUMER OF ANY RIGHTS TO WHICH HE /HER MAY BE ENTITLED.**

In accordance with the provisions of article 2254 of the French Civil Code, any action, dispute or request from a Professional Client, relating to the execution of the Order, shall be made within a maximum period of one (1) year from the day on which the Client had or should have had knowledge of the event giving rise to the action.

The provisions herein establish an allocation of the risks between the Parties. The Price reflects this allocation, and the liability limitation described.

#### **Article 14. Insurance**

KLAXOON declares that it is insured for its liability in the context of its activity under the ToSE, by a reputedly solvent insurance company. KLAXOON agrees to maintain this insurance coverage for the duration of the Subscription.

#### **Article 15. Suspension and termination**

##### **15.1. Suspension and termination by KLAXOON**

KLAXOON without prejudice to any monetary damages as from any legal action, may consider the Contract and/or Subscription automatically terminated and deactivate or cancel them without notice, in case of:

- total or partial non-payment of an invoice by the payment deadline shown on the invoice.
- provision of all or part of the Services to third parties in any form whatsoever without KLAXOON's express prior consent.
- non-compliance to the ToSE and/or ToU.

Unless otherwise agreed upon in these ToSE, the termination shall automatically take effect thirty (30) days after a formal notice sent by registered letter with acknowledgement of receipt to the Client, indicating the intention to enforce this Article and not subsequently settled, all without prejudice to any damages that KLAXOON may be entitled to claim.

In all cases covered by this article, the payment of the Subscription shall remain due to KLAXOON during the period of suspension and in the event of termination of the Subscription during the remaining period of the Subscription.

##### **15.2 Termination by the Client**

The Client may terminate the Subscription only at the end of the initial or renewed contractual term in accordance with the provisions of article 9.1.

Without prejudice to the other provisions of the TOSE, a Subscription may be terminated by the Client in the event of non-compliance by KLAXOON with any of its obligations.

The termination shall automatically take effect thirty (30) days after a formal notice sent by registered letter with acknowledgement of receipt to KLAXOON, indicating the intention to enforce this Article and not subsequently settled, all without prejudice to any damages that the Client may be entitled to claim.

##### **15.3. Consequences at the end of the Subscription**

In the event of termination of the Contract and/or Subscription for any reason whatsoever access to the paid Services shall be permanently disabled. For more information on the consequences of the end of the Subscription on Data, the Client can consult the ToU.

#### **Article 16. Confidentiality**

The Parties undertake to preserve the confidentiality of the confidential information of all kinds exchanged, collected, or generated during the Subscription and for the entire duration of the Subscription, and for a period of five (5) years starting from the end of the Subscription, for any reason whatsoever. To this end, the Parties shall refrain from communicating any of this information on any grounds whatsoever, in any form whatsoever and for any purpose whatsoever and shall undertake to ensure that this obligation is respected by all its directors, employees and subcontractors if applicable.

The obligations on the Parties under the terms of this article do not apply to confidential information regarding which the receiving Party can prove:

- That it has disclosed this information after first obtaining written authorization from the other Party or that the disclosure was made by the said other Party.

- That this information was in the public domain when it was passed on by the other Party, or that it entered the public domain after being communicated without this receiving Party committing any fault.
- That this information was received lawfully from a third party not subject to any confidentiality obligation.
- That on the date on which this information was communicated by the other Party, it already possessed this information.
- That the disclosure of this information was ordered pursuant to an imperative legal or regulatory provision, or to a definitive legal decision rendered by a court of competent jurisdiction. The Party which is subject to a disclosure obligation of this kind must, wherever possible, notify the other Party in advance, and, where applicable, request the implementation of all the measures or procedures necessary to protect the confidentiality applicable in this instance.

These exceptions are not cumulative.

### **Article 17. Force majeure**

The failure of a Party hereunder to perform any obligations, due to governmental action, law, or regulation, or due to events, such as war, act of public enemy, strikes or other labor disputes, fire, flood, acts of God, or any similar cause beyond the reasonable control of such Party, is excused for as long as said cause continues to exist. The Party prevented from performing shall promptly notify the other Parties of such non-performance and its expected duration and shall use all reasonable efforts to overcome the cause thereof as soon as practicable.

The non-fulfilment or delay in processing an Order attributable to a case of force majeure may not be subject to any legal remedy. In case of such an event preventing KLAXOON from respecting its commitments, KLAXOON agrees to inform the Client as soon as possible and to make its best efforts to limit the consequences from this case of force majeure for the Client.

KLAXOON and/or the Client may freely cancel the Order if the case of force majeure persists beyond sixty (60) days from the notice to the Client of the occurrence of the case of force majeure, without any of the Parties being able to claim damages.

### **Article 18. Hyperlinks**

The Website may contain hyperlinks to websites operated by third parties (the "**Third Party Websites**"). These links are provided for informational purposes only. KLAXOON has no control over the Third-Party Websites and accepts no liability regarding the access, content (including advertisements, products, services and/or other material available on and from the Third-Party Websites) or use of these Websites, as well as the damage that may result from consulting the information on these Third-Party Websites.

The decision to activate these hyperlinks and to consult these Third-Party Websites is the sole responsibility of the Client.

No hyperlink can be created by the Client to the Website without KLAXOON's prior express agreement.

### **Article 19. Changes to the Website and to the ToSE**

KLAXOON draws the Client's attention to the evolving nature of the KLAXOON technology, the classification of the Services available and the applicable regulations.

Accordingly, KLAXOON may bring any changes related to the technical evolution to the content of the Website and Services, including to certain features, without any resulting changes in quality or changes to the characteristics of the Services as a result.

Accordingly, KLAXOON reserves the right to modify the TOSE at any time and without prior notice to adapt them to the changes made on the Website and/or Services.

The modified ToSE will apply to all new Orders, even if linked by any means whatsoever to a previous Order and KLAXOON encourages the Client to read it completely upon each Order.

### **Article 20. Sub-contracting**

KLAXOON may, if necessary, sub-contract all or part of the performance of its obligations to a third party and shall inform the Client of its identity upon first request. Where processing is to be carried out on behalf of KLAXOON, KLAXOON shall use only processors providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that processing will meet the requirements of the Data Protection Legislation. If a processor fails to comply with its obligations regarding Personal Data protection, KLAXOON shall be liable in respect of that processing. For more information about the processor personal data processing, the Client can read the DPA.

### **Article 21. Non-waiver**

KLAXOON's failure to exercise any of the rights conferred upon it under the ToSE shall not constitute any subsequent waiver of such rights.

### **Article 22. Severance**

If any provisions of the ToSE and/or of the Order form are or should become invalid, unenforceable, or illegal with regard to applicable law or any final decision from a court of competent jurisdiction, such provisions shall be held to be ineffective. All other terms hereof and/or the Order form shall remain in full force and effect unless such provision is deemed to be a key provision for a Party at the execution date of the Contract. In such event, the Parties shall discuss in good faith and fair dealing to replace such provision by a provision that is valid and enforceable and that comes closest to expressing the initial intention of the Parties.

### **Article 23. Applicable law - competent courts**

The Parties elect domicile at their domicile or registered office.

The Order and the ToSE are governed by the laws of FRANCE without regard to conflict-of-laws principles. The Parties expressly exclude the provisions of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980.

In case of any dispute relating to any Order or the ToSE, the Parties agree, before referring the matter to any court, to seek an amicable solution, it being specified that any violation of this obligation will expose it to having the case dismissed. To that effect, the plaintiff shall notify the other Party of its intention to amicably remedy the issue, by registered letter with acknowledgement of receipt.

#### **Dispute with a Consumer:**

The Client may seek a conventional mediation procedure for consumer disputes or any other alternative dispute resolution process.

The Client is informed that it may refer to any competent consumer mediator, subject to (i) having previously attempted an amicable dispute resolution with KLAXOON as of the date of the written claim sent to KLAXOON.

The European Commission has set up a dispute resolution platform to collect consumer complaints following an online purchase for subsequent transmission to the relevant national mediators.

This platform can be accessed via the following link <http://ec.europa.eu/consumers/odr/>

If no solution can be reached, the dispute shall be brought before the competent court by the first Party to take action.

#### **Dispute with a Professional:**

In the absence of correction of its failure by the Party concerned within thirty (30) working days from receipt of the Statement of Grievances referred to above, or its first submission and/or failure to reach an amicable settlement within this same period, the dispute shall be decided by a court of competent jurisdiction in Rennes (FRANCE) exclusively, including in case of injunction, emergency procedure, third party appeals or multiple respondents.

## APPENDIX 1 – ADDITIONAL TERMS FOR SPECIFIC COUNTRIES

### 1. UNITED-STATES OF AMERICA

#### ➤ HIPAA - FISMA - Sensitive Data

The Klaxoon Services are not intended to collect information that is subject to the *Health Insurance Portability and Accountability Act (HIPAA)* or the *Federal Information Security Management Act (FISMA)*. Accordingly, the Client agrees not to use the Services where its use would result in the application of these laws.

The Client also agrees not to insert sensitive Data into the Service. Klaxoon disclaims any liability that may result from the Client's use of such sensitive Data.

#### ➤ Exports

When using the Service, the Client agrees to comply with the export control and international trade laws and regulations of the United States and any other country whose laws apply to Client or Client Data. In this regard, unless expressly approved by the U.S. government, Client shall not access the Services from a location sanctioned by the United States or if restricted by the U.S. government (e.g., *classified information or information subject to the U.S. International Traffic in Arms Regulations (ITAR) or the foreign equivalent*).

#### ➤ U.S. Government Entities

For U.S. government procurement, all Services that constitute or include KLAXOON SaaS software are deemed to be commercial computer software as defined in *Federal Acquisition Regulations (FAR) 12.212* and *Defense FAR Supplement (DFARS) 227.7202*, as applicable. Accordingly, any use, modification, reproduction, distribution, display or disclosure of the Service or accompanying Documentation by any agency, department or entity of the United States Government shall be governed solely by the terms of this Contract.