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## General Terms and Conditions of Sale for mBrainTrain Products

### 1. Scope

**1.1** Unless otherwise provided and agreed in a separate contract between mBrainTrain and the purchaser, these General Terms and Conditions of Sale (the "General Terms and Conditions") shall regulate and govern all sale and purchase arrangements and agreements for mBrainTrain products.

**1.2** The purchaser's general terms and delivery conditions shall not bind us even in the event that we do not expressly disagree with them again at or after the conclusion of the contract.

### 2. Offer and Conclusion of the Contract

**2.1** Our offers are subject to confirmation. Our obligation to keep the offer binding is hereby excluded.

**2.2** Orders and similar requests delivered to us, as well as any changes and additions to our offers shall be deemed as invitations to treat.

**2.3** Only our written order confirmation given in addition to our offer that was acknowledged by the receiver shall constitute a contract and be appropriate for determining our sale and delivery commitment. We shall implement all technical details and specifications as best as possible; their design can deviate from the specifications under this condition.

**2.4** All verbal supplementary agreements on conclusion of contract shall require a written (including e-mail) confirmation from mBrainTrain in order to be effective.

### 3. Price and Payment

**3.1** In the absence of a special agreement, all prices shall be applicable only without transport and packaging costs, plus VAT as applicable on the date of delivery.

**3.2** In the absence of a special agreement, all payments shall be made according to instructions provided by mBrainTrain, and without any deductions. A late interest in accordance with applicable law shall be charged in the event that the payment term was exceeded. We reserve the right to claim further damages.

**3.3** The purchaser shall not be entitled to a right of retention with respect to claims regarding purchased products, unless:

**(1)** the purchaser has already paid the purchase price upon receipt of a defective delivery; and

**(2)** the purchaser's counterclaim upon which the right to retention is based, is indisputable, has been established as final and absolute, or is ready for decision; and

**(3)** mBrainTrain has refused or failed to cure the defects, or replace the product or return the purchase price. The same shall apply to setoffs made by the purchaser.

**3.4** If the sold product is burdened with costs as a result of credits in favor of the dealer/customer, such costs shall be borne by the dealer/customer. The same shall apply to bank charges for the account of mBrainTrain as a result of transactions conducted with the dealer/customer.

**3.5** If mBrainTrain is required to pay additional taxes or costs due to the fact that the purchaser has stated an incorrect VAT ID number (if applicable) or due to other faults of the purchaser, mBrainTrain shall be entitled to charge the back taxes and costs to the purchaser.

#### **4. Online payment and Refund**

**4.1.** Purchaser is also able to pay the price for the order via one of the online payment methods available on the mBrainTrain site using one of the cited credit/debit card which have to be approved for internet payment by the bank of the holder: Visa, MasterCard, Maestro.

**4.2.** All payments will be effectuated in the Serbian currency – dinar (RSD), i.e. dinar counter-value according to the middle exchange rate of the National Bank of Serbia on the day of placing the order. If the payment is done using foreign issuers payment cards, total amount of transaction will be converted into bank settlement currency (EUR), according to the current exchange rate of the National Bank of Serbia on the date of payment. Once the transaction is settled the already converted amount will be converted into your local currency according to the exchange rate of credit card associations. As a result of this conversion there is a possibility of a slight difference from the original price in RSD.

**4.3.** When making payment through internet portal, Purchaser inserts personal data, name, surname, email and address as well as the number of payment card. mBrainTrain collects the personal data of the Purchaser which is necessary for charging for the Services. Purchaser's personal data is used exclusively for the purpose of securing payment in order to realize the order, and all according to mBrainTrain Privacy Policy.

**4.4.** Credit/debit card information is not available to mBrainTrain at any time, and are not kept in the system of mBrainTrain.

**4.5.** When paying for the order, Purchaser bares all the fees related to the order, including the exchange rate difference, while mBrainTrain bares the transaction costs (bank provision). The funds are transferred to mBrainTrain's account after the date on which the order confirmation is received by the Purchaser. Until then, the funds on the Purchaser's account are only reserved by the bank.

**4.6.** Purchaser is exclusively responsible for settling all monetary obligations towards the mBrainTrain. Purchaser agrees that it will not burden the mBrainTrain's account with back charges, except the bank's transfer fee, that it will not recall the payment order and warrants that the payment order shall be realized in total, i.e. shall not be declined. Purchaser is obligated to compensate mBrainTrain for all back charges, declined and/or recalled payment orders related to the order.

**4.7.** Paying with credit/debit cards is done in cooperation with ALLSECURE DOO BEOGRAD and UNICREDIT BANK SRBIJA A.D. Beograd. The payment transaction is executed in a secured and certified manner through ALLSECURE DOO Payment Gateway, simply by entering the credit/debit card information, and executed on the secure page of ALLSECURE DOO BEOGRAD which is PCI DSS certified, and applies 3D Secure Protection. When entering the credit/debit card information, confidential information is transferred through public networks in a protected (encrypted) form by using SSL protocols, applying the most up-to-date methods of tokenization of sensitive information, and in accordance with PCI-DSS standards, and applying 3D Secure protection. For more security details, please visit the ALLSECURE DOO BEOGRAD site, available at: <https://www.allsecure.rs/en/>. Data protection while paying on-line is guaranteed by the processor of the credit/debit cards, UNICREDIT BANK SRBIJA A.D. Beograd. Thus, you might be subject to the processor of the credit/debit cards' privacy policy related to the payment processing, which we strongly advise you to get acquainted with. In order to effectuate all obligations under these Terms of Sale, ALLSECURE DOO BEOGRAD and/or UNICREDIT BANK SRBIJA A.D. Beograd may deliver to the mBrainTrain personalized and/or depersonalized data which relate to the Purchaser, and to which the Purchaser gives its consent. Privacy policy applies to the privacy and personal data protection.

**4.8.** Purchaser is obligated to respect and act according to terms and conditions and other relevant regulations either of mBrainTrain or other party related to online payment.

**4.9.** In case of refund, (e.g. for the reasons of wrong payment, excess amount of payment or any other reason that is not contrary to these Terms of Services), and when the Purchaser has paid online with one of the credit/debit cards, partially or in full, mBrainTrain is obliged to transfer the funds received from the Purchaser by the same means as described in 4.1 – 4.7., i.e. the bank shall transfer the funds on the card holder's account used to make the online payment. Refund expenses will be borne by the Purchaser, i.e. the card holder.

**4.10.** Notwithstanding the clauses under Article 9 of these Terms of Sales, when the Purchaser has paid online with one of the credit/debit cards, it is entitled to rescind from the order once in the calendar year

without liability and with a right to a refund, only if the Purchaser makes a written request to mBrainTrain within 3 days from receiving the order.

**4.11.** The refund from article 4.10 is executed only after mBrainTrain has received the returned order, and after it is established that the order is undamaged and in good condition, and that it has not been used. The Purchaser is liable for any and all irregularities and/or damages related to the order. If it is established that the order has been returned in damaged, used, or irregular condition, the amount for the refund shall be accordingly reduced, or the refund shall be refused. The approved refund is processed exclusively through the same VISA, Maestro, MasterCard which was used for the payment. The bank will, at the mBrainTrain's request, perform the refund exclusively to the account of the credit/debit card user. The refund is executed by the same means as described in 4.1 – 4.7., i.e. the bank shall transfer the funds on the card holder's account used to make the online payment. Refund expenses will be borne by the Purchaser, i.e. the card holder in total, including shipping costs and bank transfer cost.

## **5. Delivery Period**

**5.1** Delivery period is 12 weeks. The agreed delivery period shall commence on the date on which the order confirmation is received. The delivery period shall be deemed to be complied with, if the shipment has been dispatched within the period with the purchaser having been notified about this dispatch.

**5.2** mBrainTrain will use reasonable amount of care for coordinating the transport process until the final destination, but shall not be liable in any way for circumstances referring to the shipping process, handling of import VAT, special import licensing, freight and storage charges, and similar.

**5.3** The delivery period shall be reasonably extended in the event of measures resulting from industrial disputes, in particular strikes and lockouts, as well as of unforeseen impediments, which are beyond our control as long as such impediments demonstrably affect the delivery of the delivery item. The same shall apply if upstream suppliers experience such circumstances. In addition, we shall not be responsible for any of the aforementioned circumstances if they occur during an existing delay. We shall inform the purchaser about the beginning and end of such impediments if they affect compliance with the delivery period or the extension of the delay.

**5.4** In the event of a delay by mBrainTrain, the purchaser reserves the right to demand compensation for potentially caused damages. The damages caused by the delay for each full week of delay shall be 0.5 % in the aggregate, but not exceeding 5 % of the value of that part of the total delivery, which cannot be used in due time or not according to contract due to the delay.

**5.5** The compliance with the delivery term shall be subject to the purchaser's compliance with its contractual obligations.

## **6. Passing of Risk and Acceptance**

**6.1** The risk shall pass to the purchaser at the latest upon the dispatch of the delivery items even in case of partial shipments.

**6.2** In the event that the shipment is delayed due to circumstances for which the purchaser is responsible, the risk shall pass to the purchaser on the day on which we are ready to dispatch. However, we agree to take out the insurance and at the purchaser's expense as requested by the purchaser.

**6.3** Partial shipments shall be acceptable.

## **7. Reservation of Title. Resale**

**7.1** We shall reserve the title to the delivery item until receipt of all payments as stipulated in the supply agreement.

**7.2** The purchaser shall not be allowed to resell the purchased goods or to dispose with them in any other way (lease, use for trial, hypothecations and transfers by way of security, etc.) without previous, express written consent from mBrainTrain in all of cases, which consent shall be conditioned by purchaser agreeing with its customers upon the compliance with Terms of Use for mBrainTrain Products and can be made contingent on the pecuniary claim of mBrainTrain being secured.

**7.3** For the event of resale or other disposal, the purchaser hereby assigns to us all claims including all ancillary rights, resulting from the resale, for the purpose of meeting our claims; mBrainTrain hereby accepts this assignment. In the event that the purchaser fails to fulfill its obligations to mBrainTrain or if the purchaser breaches its contractual obligations, in particular as provided in Clause 6.2, or if the buyer fails to fulfill its obligations to the purchaser, or if the buyer breaches the contract resulting in substantial impacts on the contractual relationship, the purchaser shall immediately provide mBrainTrain with the information required for collection of the assigned claims, in particular regarding the buyer's (garnishee's) name and address; in addition, the purchaser shall inform the buyers about the assignment, in the event that this has not happened yet. mBrainTrain shall then be entitled to inform the buyers about the assignment of claim and to collect the assigned claim or take back the goods subject to reservation of title.

**6.4** We shall be informed immediately about any attachments and confiscations of the purchased goods subject to reservation of title, and the purchaser shall bear any resulting investment costs.

**6.5** In the event that the purchaser acts contrary to contract, particularly in the event of late payments, we shall be entitled to take the goods back after having sent a reminder, whereas the purchaser shall be obliged to release the goods. The enforcement of the reservation of title as well as our attachment of the delivery item shall not be deemed as a withdrawal from the contract.

## **8. Warranty**

**8.1** The purchaser shall immediately examine the goods upon receipt. We shall only be bound by any defects that can be detected upon thorough examination if such defects have been notified to us within three business days upon receipt of the goods. In the event of hidden defects, the period within which complaints may be made shall commence on the date of the discovery and shall end no later than the expiration of the warranty period as provided in Clause 7.2. These provisions shall also apply to complaints regarding quantities. The claims for defects shall not apply in the event of insignificant deviations from the agreed quality or only insignificant impairments with respect to the serviceability.

In the event that the purchaser uses own products or accessories in combination with the products from mBrainTrain (hardware, software) and such own products or accessories are not in a technically perfect condition or are not compatible, the guarantee shall be deemed to be excluded.

**8.2** Warranty period is 12 (twelve) months as of the date of delivery. This shall not apply cases where life, body and health have been injured, and in cases of deliberate or grossly negligent breaches of duty and fraudulent concealment of a defect. The warranty period shall be extended for a period in which repairs have been made, or shall commence anew in case of product replacement.

**8.3** Defects for which we provide a warranty shall only bind us to repair the defective parts or to replace them at our option; the defective parts shall be made available to us upon our request. In the event that the repairs or the replacement fails (two attempts per defect, not exceeding a total of six attempts)

within a reasonable grace period, the purchaser may request a reduction of the price or, at its discretion, the cancellation of this contract.

**8.4** Characteristics of the products shall be warranted only if warranted by us expressly in writing. mBrainTrain shall not be liable for damage that was not caused to the delivery item itself, for lost profits or any other pecuniary losses of the purchaser, unless fraudulent intent or a warranty existed.

**8.5** Complaints regarding partial shipments shall not entitle the purchaser to refuse the remaining shipment unless the partial shipment and remaining shipment are functionally associated and the removal of the defects fails or has failed.

**8.6** Warranties set forth in these General Terms are exclusive. Further details regarding the warranty may follow from the warranty card or product manuals.

## **9. Rescission and Liability**

**9.1** Either party to the sale and purchase contract may rescind the contract, without liability, if the entire delivery becomes impossible before the transfer of risk without fault of the rescinding party. The same shall apply in the event of inability and if, upon ordering similar items, the design of a part of the shipment becomes impossible with respect to the quantity and the purchaser has a legitimate interest in refusing a partial shipment. If this not the case, the purchaser may reduce the consideration accordingly.

**9.2** If mBrainTrain neither acted deliberately nor with gross negligence, mBrainTrain shall be liable for damages only if it has negligently breached a major contractual obligation or a cardinal obligation (material defects), in which case the liability, regardless of cause or form of action, shall not exceed the value of direct damage sustained or any amount purchaser has paid to mBrainTrain under the contract during three (3) months immediately prior to the time purchaser's cause of action arose, whichever is lesser.

**9.3** Claims resulting from the manufacturer's liability shall be limited to the indemnification paid by the insurance carrier. mBrainTrain's liability shall only apply if the insurer refuses indemnification or the amount insured does not provide adequate compensation for damages, in which case the liability shall be limited to the foreseeable damage typical to the contract, excluding loss of profits.

**9.4** In no event shall mBrainTrain be liable for any damages or loss caused by or resulting from i) any modification or repair to the purchased goods not made by the mBrainTrain or its agents, representatives or employees; ii) use of the products in combination with any product not provided or permitted by mBrainTrain; iii) use of the products in violation of the contract and in a manner or for an application other than for which it was designed; iv) purchaser/user's failure to use any corrections made available by mBrainTrain, or v) the abuse of the products.

## **10. Intellectual Property**

**10.1** Where mBrainTrain delivers to the purchaser tangible products or programs (Products) in performing the contract and where intellectual property (IP) rights, including but not limited to inventions (patents), copyright, industrial design, trademarks, know-how, etc., in favor of mBrainTrain exist or arise in these Products, such rights shall remain the exclusive property of mBrainTrain. The same shall apply, if Products from mBrainTrain otherwise become available to the purchaser.

**10.2** mBrainTrain shall be the exclusive proprietor of all derivative IP rights and/or works (products) that are based on the IP rights existing in the purchased Products and reserves all rights on and in connection with such derivative rights.

**10.3** The purchaser is not allowed to license or sub-license any IP rights existing or arising out of, or in connection with the Products, without prior written approval of mBrainTrain.

## **11. Software**

**11.1** If the contract provides for the supply of own software by mBrainTrain, mBrainTrain shall grant to the purchaser a non-exclusive and non-transferable license for the term of 5 years. This right does not include any rights to source codes.

**11.2** Supplied software is provided to purchaser as the copyright, purchaser being aware of all of its known features and that it might contain hidden defects and malfunctions. mBrainTrain does not warrant that operation and performance of the provided software or any of its parts shall be uninterrupted or error free.

**11.3** Support (assistance) is only provided for the current version of the software which has been improved by means of patches and/or updates. In the event of the further development of the software with the option to purchase a paid upgrade, support shall be provided for the previous version for the term of one year following the release of the new version.

## **12. Claims in the Case of Infringement of Intellectual Property Rights**

**12.1** mBrainTrain shall indemnify purchaser against all claims of patents, registered design, copyrights, trademark or trade name or other intellectual property right arising out of the design, construction manufacture or use of mBrainTrain products or any of its parts subject to the terms of this Article 11.

**12.2** Purchaser shall promptly notify mBrainTrain in writing of any alleged infringement of which it has notice.

**12.3** In the event that any claim of infringement is made against purchaser, mBrainTrain, on receiving notice of such claim, may at its own cost conduct negotiations for the settlement of such claim and defend any litigation arising there from. Purchaser shall at the request of mBrainTrain provide all reasonable assistance for the purpose of contesting any such claim or action. Purchaser shall not make any admissions which might be prejudicial to mBrainTrain.

**12.4** If at any time an allegation of infringement of any patent, registered design, copyright, trademark, trade name or other intellectual right is made in respect of the purchased products or in mBrainTrain's opinion is likely to be made, mBrainTrain may at its own expense modify or replace such product or any of its parts so as to avoid the infringement without detracting from overall performance.

**12.5** mBrainTrain's indemnification obligation under this Article 11 shall not apply to the extent that the third party claim or suit is caused by or results from (a) any modification to the products not made by mBrainTrain, (b) any modifications to the products made by mBrainTrain in response to specifications or instructions provided by purchaser, (c) operation or use of the product in combination with any software or hardware not provided by mBrainTrain, (d) Operation or use of the product in violation of the contract or in a manner or for an application other than for which it was designed, or (e) purchaser/user's failure to use or operate any modifications (including but not limited to corrections and enhancements) made available by mBrainTrain.

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### **13. Confidentiality. Business and Trade Secrets**

**13.1** All facts in connection with the business operations of mBrainTrain that are not obvious, but only known to a limited group of persons, and in the secrecy of which mBrainTrain has a legitimate economic interest shall constitute business and trade secrets and as such represent Confidential Information. Ownership of any Confidential Information provided by one party to the other shall remain with the party providing the Confidential Information.

**13.2** The Confidential Information furnished by one party (hereinafter referred to as "the Disclosing Party") to the other (hereinafter referred to as "the Receiving Party") shall be kept confidential, by the Receiving Party, and shall be used only for the purpose for which it is delivered and for the performance of the contract, and shall be handled with the same degree of care which the receiving Party applies to its own Confidential Information (but in no event less than reasonable care), and disclosure to the Receiving Party's employees shall be restricted to "on a need to know basis", and may not be used for any other purposes without the prior written consent of the Disclosing Party, unless it:

- (1)** Is in the public domain at the time of disclosure or later becomes part of the public domain through no fault of the Receiving Party; or
- (2)** Was known to the Receiving Party prior to disclosure by the Disclosing Party as proven by the Receiving Party's written records; or
- (3)** Was lawfully obtained from third party(ies) and is not subject to confidentiality; or
- (4)** Was independently developed (by personnel having no access to the Confidential Information) by the Receiving Party as proven by the Receiving Party's written records, or
- (5)** Is required to be disclosed by applicable law, including relevant governmental requirements, order of the court or competent authority, provided that the Receiving Party shall notify the Disclosing Party immediately of such requirement. In that case the Receiving Party shall notify the Disclosing Party immediately of such requirement and shall assist it to participate in any proceedings to prevent such disclosure.

### **14. Place of Jurisdiction, Governing Law**

**14.1** All disputes arising out of or in connection with the contract for sale and purchase of mBrainTrain products shall be finally settled by arbitration organized in accordance with the Rules of the Belgrade Arbitration Center (Belgrade Rules). The number of arbitrators shall be three. The place of arbitration shall be Belgrade, Serbia. The language to be used in the arbitral proceedings shall be English, or Serbian if all parties to the arbitration agree so. The applicable substantive law shall be Serbian law, excluding UN Convention on Contracts for the International Sale of Goods.

**14.2** Notwithstanding previous clause 13.1, the right of both Parties to have recourse to a court of competent jurisdiction for obtaining interim relief shall remain unaffected. Additionally, mBrainTrain shall have the right to seek collection of moneys due for unpaid price without initiating arbitration procedure, through direct enforcement procedure if such procedure is available in jurisdiction of the debtor.

**14.3** All disputes in all non-arbitrable matters, shall be finally settled before competent court in Belgrade, Serbia.

## **15. Use and Support**

**15.1** All matters, rights and obligations regarding use of purchased products are determined and governed by Terms of Use for mBrainTrain Products, as amended from time to time and are hereby incorporated into the contract by reference.

**15.2** All matters, rights and obligations regarding Support, updates, upgrades for purchased products and software are determined and governed by Maintenance and Support Terms for mBrainTrain Products, as amended from time to time and are hereby incorporated into the contract by reference.

## **16. Final Provisions**

**16.1** A gap or an invalid provision in the contract shall not affect the validity of the contract as a whole. The invalid provision shall be replaced with a statutory provision of Serbian Law. In the event of gaps that cannot be filled by statutory provisions, the contract shall be construed by way of a supplementary interpretation of what the Parties would have agreed after appropriate consideration of their interests in good faith, if they had considered the case not envisaged.

**16.2** Any obligations or responsibilities which by their nature extend beyond expiration or termination of the contract shall survive and remain in effect in the event of any such expiration or termination.