

# Imagicle terms and conditions of sale.

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a company part of Quinta spa

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## 1 General terms and conditions

These Terms and Conditions are the exclusive terms and conditions under which Imagicle S.p.a. (hereinafter "Imagicle") sells and/or provides to you ("You" or "Customer"), and You purchase and/or accept from Imagicle software products, which license can either be perpetual or for a specified period of time (together, "Products").

Secondly, Imagicle sells and/or provides to You and You purchase and/or accept from Imagicle services, including, but not limited to, Technical Support and Software Maintenance Services and Professional Services for deployment, configuration and user training (together, "Services").

"Subscriptions" are hereunder referred to Imagicle software licenses purchased for a specified period of time and to Technical Support and Software Maintenance services purchased for a specified period of time.

If Customer has agreed to terms and conditions applicable to this sale of Product and/or Services, then those terms and conditions shall apply to this sale of Product and/or Services. The Customer agrees to be bound by these Terms and Conditions and the entire Documentation relating to the Products by placing an order, or when consenting, explicitly or implicitly, to the provision of an Imagicle Service.

These Terms and Conditions constitute a binding contract between You and Imagicle (together, the "Parties" and individually, each a "Party"). They are subject to change without prior notice, except that the Terms and Conditions posted on Imagicle's website at the time You place an order will govern the order in question.

Unless otherwise stipulated in specific Agreement between the Parties, these Terms and Conditions of Sale govern the purchase of Products and Services between Imagicle spa and the Customer.

The Contract is constituted, in addition to these Terms and Conditions of sale and the Sales Order, of the following components, relevant to specific cases:

- EULA (End User License Agreement)
- SPLA (Service Provider License Agreement)
- NFRLA (Not For Resale License Agreement)
- Software Maintenance Service and Support
- Privacy Policy
- Acknowledgments

which form a fundamental and substantial part of the Contract.

## 2 Sales Order

Customer orders the Imagicle Products and Services via one or more Sales Orders issued to [orders@imagicle.com](mailto:orders@imagicle.com) or to its Imagicle contact.

Sales Order means a completed version of Imagicle's standard form of sales order for the Products and Services, or other form of order acceptable to Imagicle, that has been submitted to Imagicle by Customer or an Imagicle's authorized reseller ("Reseller") from whom Customer is purchasing Software license rights, and that Imagicle has accepted in writing or delivering Products and Services. Each Sales Order will specify: (i) a description of the Products to be licensed, (ii) the license metrics and other scope limitations applicable to the Products, (iii) the term of the Product and the term of Service, (iv) the fees to be paid for the Products and related Services, (iv) any additional terms and conditions as may be mutually agreed upon by Imagicle and the Customer or its Reseller.

Sales Order Effective Date (or Contract Effective Date) means, with respect to each Sales Order, the effective date specified in the Sale Order or, if none, the date on which the last of Imagicle

and Customer executes the Sales Order. If Customer purchases Products and Services through a Reseller, the Sales Order Effective Date is upon Imagicle's acceptance of the Sales Order following its submission by the Reseller.

In such case certain of Customer's obligations hereunder may be performed through the Reseller instead of directly to Imagicle, all pursuant to any instructions the Reseller provides to the Customer. Reseller is authorized and/or required to delegate certain rights and/or obligations hereunder to the Customer.

If Customer requires that a purchase order "PO" be issued before making payment under an Order Form, Customer must provide to Imagicle such valid PO conforming to the applicable Order Form in time for Customer to meet its payment obligations. The terms and conditions of any PO (or of any other unilateral Customer document not agreed in writing by authorized representatives of both Parties) will have no effect on the rights or obligations of the Parties, regardless of any failure to object to such terms and conditions.

### 3 Prices

Subject to these Terms and Conditions, pricing for Products and Services can be found in the customer area on the Imagicle website accessible through user credentials and passwords provided by Imagicle, or established in the bids/quotations proposed to the Customer. Bids/quotes expire after thirty (30) days, unless otherwise specified in the offer made to the Customer.

Prices displayed are always tax excluded, which will be calculated subsequently based on the billing address of the customer.

Imagicle reserves the right to make adjustments to Product and Services' pricing for reasons including, but not limited to:

- price variations established unilaterally by Imagicle;
- changing market conditions;
- product unavailability;
- modification and errors in bids/quotes.

### 4 Subscriptions terms

Each Sales Order will commence on the Sales Order Effective Date, and will continue for the period specified in the Sales Order or, if not so specified, one year, which is the minimum "Initial Term". Unless otherwise specified in the Sales Order, the Initial Term will automatically renew for additional terms of the same length as the Initial Term (each a "Renewal Term") unless either party declines renewal by notice in writing to that effect delivered to the other party at least thirty (30) days prior to expiration of the then current term. The Initial Term and each Renewal Term are individually referred to in this Contract as the "License Term".

Fees for Subscriptions could be subject to annual increases, which will be effective beginning upon the first day of each Renewal Term. Imagicle will notify Customer of any increase prior to its becoming effective; notice may be in a form of an invoice. If Customer objects to the increase, then Customer may terminate its License; any such termination will be effective on expiration of the then current License Term. Customer acknowledges that expiration of any discount or incentive programs to which Customer was previously entitled do not constitute fee increases.

Customer may terminate any Sales Order for convenience following expiration of the Initial Term specified in the Sales Order, upon not less than 30 days prior written notice to Imagicle. If Customer terminates any Sales Order, Customer will not be entitled to any refund of Subscription Fees paid or relief from Subscription Fees payable under such Sales Order.

If either Party materially breaches any of its obligations under this Contract and fails to cure such breach within thirty (30) days from the date it receives from the non-breaching Party a

notice of the breach and a demand for cure, then the non-breaching Party may terminate all or any affected Sales Orders, Licenses or related services immediately on notice. Without limiting the foregoing, Customer's failure to pay past due Subscription Fees within 15 days of receipt of a written notice of late payment will constitute a material breach of the applicable Sales Order and of the Subscription. If Customer has not cured a material breach within the applicable cure period then, until Customer has cured the breach in full, Imagicle may, in its sole discretion, and without prejudice to its other rights following material breach and failure to cure, (i) suspend performance of some or all of Imagicle's obligations under the applicable Sales Order, including obligations to provide Products and Services; and (ii) suspend the Products and Services granted pursuant to the applicable Sales Order. Notice of termination for any Sales Order will not be interpreted to be notice of termination for any other Sales Order.

Upon any termination or expiration of a License Customer will destroy all copies of the Software and the Documentation within its custody or control within thirty (30) days of such termination; and (ii) each Party will return or destroy all copies of any Confidential Information of the other.

No expiration or termination of this Contract or of any Sales Order will relieve Customer of its obligation to pay any amounts accruing under such Sales Order prior to such expiration or termination.

Upon request by Imagicle, Customer will provide Imagicle with, or permit Imagicle to generate, a report generated by the Software indicating Customer's compliance with the license metrics and other scope limitations applicable to the Products for the period specified in the request. In the event of any use in excess of the License rights for which Customer has paid, Customer will promptly pay Imagicle Subscription Fees for such excess use at the rates specified in the applicable Sales Order. Upon receipt of such Subscription Fees, Imagicle will extend the License to cover the excess.

## 5 Payments

All obligations to pay fees and charges for Products and Services are non-cancelable and all payments are non-refundable. Customer must make all payments without setoffs, withholdings or deductions of any kind.

Customer must pay all Fees and charges due under all order forms in advance or as specified in the Sales Order.

Customer will make all payments in the currency specified in the Sales Order.

All invoices issued by Imagicle shall be paid Wire transfer (ETF), Credit card, PayPal or as specified in the applicable Sales Order.

In case of payment delays, Imagicle reserves the right to inhibit the use of the Products and/or to suspend access to the Services.

Without formal notice, Imagicle may impose a finance charge of 1.0% per month on amounts unpaid by Customer on their due date, computed for each day that the payment is late.

In case of payment in installments or any other one-off sums owed, the non-payment of even one installment determines the termination, for the Customer, of the benefit of the term, empowering Imagicle to demand immediate payment of the entire sum.

It is understood that, in the event of termination of the relationship, the Customer will be required to pay, with a single payment, all sums established by the installment plan.

All costs incurred by Imagicle for the collection of overdue amounts, including legal fees, are charged to the Customer, as permitted by laws and regulations.

No fees are due from Customer for authorized use of the Software under a Free Trial License.

## 6 Taxes

Unless expressly specified otherwise in any Sales Order, all Fees and charges, rates and estimates exclude Taxes. If Customer has tax-exempt status, Customer will provide written evidence of such status.

Customer will be responsible for any applicable sales, use, or any value added or similar taxes ("Taxes") payable with respect to the licensing of the Software to Customer, provision of the Services, or otherwise arising out of or in connection with this Contract, other than taxes based upon Imagicle's personal property ownership or net income.

## 7 Warranties and limitations of liability

Imagicle undertakes to comply with high-quality standards in the sale of products and the provision of Software Services to the Customer.

Imagicle will not be responsible for interruptions, delays, and malfunctions in the provision of the Products/Services deriving from the Customer's breaches or from the application of specific laws or regulations.

Moreover, Imagicle will not be responsible for, and no liability shall result to Imagicle for any damage, lost profits, losses or costs incurred which result from unforeseeable circumstances or force majeure without prejudice to the terms established by mandatory provisions of the law. In case of Imagicle ascertained responsibility, the Customer will be entitled to a refund as established in the EULA or the SPLA and, in any case, Imagicle liability for any part of the Software shall not exceed the license fees actually paid by the Customer for the purchase of the perpetual license or the subscription fee paid in the last 12 months.

The entity and payment method of any refund to the Customer will be established on a case-by-case basis.

## 8 Confidential information

"Confidential Information" means all information transmitted by either party to the other pursuant to or in connection with this Contract that the disclosing party identifies as being proprietary or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential. The receiving party will not disclose the disclosing party's Confidential Information to any third party, and will protect the disclosing party's Confidential Information using the same degree of care it uses to protect its own Confidential Information, and in no event less than a reasonable standard of care. The receiving party will not use such Confidential Information except to further the purposes of this Contract. Imagicle's Confidential Information includes information regarding products, pre-release products, software, services, pricing, marketing and business plans and financial information. Imagicle and Customer will treat the terms and conditions of this Contract as confidential.

Confidential Information will not include information that the receiving party can establish: (i) has entered the public domain without the receiving party's breach of any obligation owed to the disclosing party; (ii) has been rightfully received by the receiving party from a third party without confidentiality restrictions; (iii) is known to the receiving party without any restriction as to use or disclosure prior to first receipt by the receiving party from the disclosing party hereunder; or (iv) has been independently developed by the receiving party.

If any applicable law, regulation or judicial or administrative order requires the receiving party to disclose any of the disclosing party's Confidential Information (a "Disclosure Order") then, unless otherwise required by the Disclosure Order, the receiving party will promptly notify the disclosing party in writing prior to making any such disclosure, in order to facilitate the disclosing party's efforts to protect its Confidential Information. Following such notification, the

receiving party will cooperate with the disclosing party, at the disclosing party's reasonable expense, in seeking and obtaining protection for the disclosing party's Confidential Information.

The terms of confidentiality under this Contract will not limit either party's right to independently develop or acquire products without use of the other party's Confidential Information.

Imagicle is permitted to identify Customer as an Imagicle Customer on Imagicle's website and marketing materials.

## 9 Enhancement Analysis

Imagicle may analyze Customer's usage history and statistics (collectively, "Enhancement Data") for Imagicle's internal purposes, including to improve and enhance the Software and related services. Unless otherwise specified in the Sales Order, Customer authorizes and will not interfere with the Software's transmission of Enhancement Data to Imagicle. Imagicle may make information derived from its analysis of Enhancement Data publically available, provided that the publicized information does not include any Enhancement Data that has not been aggregated and anonymized. For the purposes of this Contract, aggregated and anonymized Enhancement Data means Enhancement Data that (i) has been aggregated with other data, and (ii) does not contain information that identifies Customer or its Users.

For the sake of clarity, aggregated and anonymized data is not Confidential Information of Customer.

## 10 Export control

The Software is owned by Imagicle and the export is protected by Italian and international laws on civil and commercial contract relations.

The Products, Services and all related documentation may be subject to the export rules of the country in which the Customer has its registered office.

Consequently, if the Customer has its registered office in a country that doesn't allow it to export, re-export or release any Product or Service to specific States, shall not export or release, directly or indirectly, any Imagicle product.

Therefore, Imagicle intends to comply with the legislation of the country where the Customer has its registered office.

## 11 Variations to terms and conditions

Imagicle may, at its sole discretion, modify these terms and conditions.

In case of variation, communication will be sent; in case of silent consent of the Customer following communication, the modifications will be considered implicitly accepted.

If such changes involve a worsening economic or service provision for the Customer, they will be effective only after a period of thirty (30) days from the acquisition of the relevant communication.

Within this period, the Customer may withdraw from the Contract, with immediate effect and without penalties, by email or other means provided for in the notice received.

## 12 Governing law, compulsory arbitration, jurisdiction

Before requesting a court of law, Imagicle intends to resolve any dispute by Arbitration.

All contracts are stipulated by Imagicle Spa with registered office in Italy, and Italian law applies to them. For any dispute concerning the interpretation and execution of this Contract, if the arbitration has not been resolved and the court is appealed, the Italian courts will be appointed.

## 13 Miscellaneous

The Contract between Imagicle and the Customer will be binding on both Parties. Finally, the Contract, including the sections of which it is composed and which constitute an integral and substantial part of it, constitute all the terms and conditions agreed upon between the Customer and Imagicle and supersede any prior notes in relation to the subject matter of these Agreements, whether written or oral (e.g. telephone).

## 14 Contacts

For any questions or clarifications on Imagicle Licensing Agreements, Products, and Services, users and customers can contact Imagicle at [legal@imagicle.com](mailto:legal@imagicle.com).

