

Imagicle Terms and Conditions of Sale

Updated on May, 2024

Imagicle Spa

Via Fondacci, 272
55054 Massarosa
(LU) Italy

T +39.0584.943232
F +39.0584.943325
E info@imagicle.com
W www.imagicle.com

€ 353.080,00 paid up cap.
VAT ID IT 01715870463
company reg. 01715870463

a company part of Zucchetti spa

1 General terms and conditions

Unless otherwise provided for by specific agreement between the Parties, as hereinafter defined, these Terms and Conditions of Sale (“T&C”) are the exclusive terms and conditions under which:

- (i) Imagicle Spa (“Imagicle”) sells and/or provides to You (“You” or “Customer”), and You purchase and/or accept from Imagicle, software and services which may be provided in various forms such as, by way of example, perpetual licenses, subscriptions, cloud services (the “Imagicle Solutions”)
- (ii) 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 (described in the Maintenance Service and Support published on Imagicle website) and Professional Services (described in the Advanced Service Agreement published on Imagicle website) for deployment, configuration and user training (together, “Services”)

By purchasing Imagicle Solutions and/or Services, Customer accepts those T&C which, therefore, shall apply to this sale.

Specifically, the Customer agrees to be bound by these T&C and the entire contractual documentation relating to the Imagicle Solutions and the Services by placing an order, or when consenting, explicitly or implicitly, to the provision of an Imagicle Service.

Following the submission of a Purchase Order (as defined below), these T&C will constitute a binding contract between You and Imagicle (together, the “Parties” and individually, each a “Party”).

Each individual agreement entered between the Parties (the “Contract”) consists of, in addition to these T&C and the Purchase Order (as defined below), the following documents relevant to specific cases:

1. Applicable license agreement:
 - EULA (End User License Agreement)
 - SPLA (Service Provider License Agreement)
 - NFRLA (Not For Resale License Agreement)
2. Software Maintenance Service and Support
3. Documentation (i.e. service description, manuals and other related sales and technical documentation, available on Imagicle website and/or provided to Customer by Imagicle)
4. Privacy Policy
5. Acknowledgments

which, therefore, are important and substantial part of the Contract.

If there is a conflict among or between the terms in the various documents which make up the Contract:

- the Purchase Order prevails if it is the same as the Proposal – Sales Order
- in any other case, the terms and conditions set forth hereunder shall prevail.

If there is an order of precedence within a type of document, such order shall be stated in the document signed by either Parties.

No additional or different terms and conditions can be applied without Imagicle’s prior written consent.

2 Purchase Order

Customer orders Imagicle Solutions and Services by signing and delivering via e-mail one or more Imagicle Proposal - Sales Orders issued to orders@imagicle.com or to its Imagicle contact.

Proposal – Sales Order means a completed version of Imagicle’s standard form of sales order with which Imagicle makes a commercial offer for the Imagicle Solutions and Services, or other form of order acceptable to Imagicle, that shall specify (i) Customer’s name, address and contact person details, (ii) a specific and detailed list of Imagicle Solutions and/or Services requested, (iii) the quantity of Imagicle Solutions and Services requested, (iv) the license metrics and other scope limitations applicable to the Imagicle Solutions; (v) the fees; (vi) the Initial Term of the Subscription and the auto-renewal option; (vii) any additional terms and conditions that may be mutually agreed between the Parties.

The Proposal – Sales Order becomes legally binding for the Customer (who can therefore purchase and resell to the end user) after its acceptance. The Customer accepts the Proposal – Sales Order through a Purchase Order (“PO”), i.e., a specific acceptance document that can be on Imagicle’s standard or on a Customer template and, in this case, must indicate the Imagicle quote numbers as indicated in the Proposal – Sales Order.

Imagicle has the right to not accept the Purchase Order if: (i) the signing person has no right to sign and legal bind the Customer; (ii) the Proposal – Sales Order has been modified; (iii) the information required, or the signature, are not complete, or do not match Imagicle’s record.

The Start Date of each PO (or “Contract Start Date” or “PO Start Date”) means, with respect to each PO, the start date specified in the Proposal – Sales Order or, if none, the date on which the last of Imagicle and Customer executes the Proposal – Sales Order. If Customer purchases Imagicle Solutions and Services through a Reseller, the PO Start Date is upon Imagicle’s acceptance of the PO following its submission by the Reseller.

In such case certain of Customer’s obligations hereunder may be performed through the Reseller (Imagicle’s Partner expressly authorized by Imagicle to resell on its behalf) 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 to issue “PO” on its template, must provide to Imagicle such valid PO conforming to the applicable Proposal – Sales Order 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 T&C, pricing for Imagicle Solutions and Services (hereinafter individually referred to as “Perpetual Licenses Fees”, “Subscription Fees”, “Services Fees” or, together, the “Fees”) 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 Imagicle Solutions 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

For the purpose of the present T&C, "Subscriptions" are hereunder referred to Imagicle Solutions purchased alone or together with Technical Support and Software Maintenance Services for a specified period of time.

Each Contract (executed upon the acceptance of Imagicle – Proposal Sales Order by the Customer with a PO according to the procedure described in article 2) shall begin on the PO Start Date, and will continue for the period specified in the Proposal - Sales Order or, if not so specified, one year, which is the minimum "Initial Term". Unless otherwise specified in the Proposal- Sales Order, the Initial Term will be automatically renewed for additional term 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".

After the execution of a Contract, Imagicle makes the Imagicle Solutions licenses available in the Customer's Imagicle Cloud licensing dedicated portal or delivers via email within 48 hours from the invoice issue. All Imagicle Solutions (and Documentation) are available for immediate download from Imagicle's website, with a full 30 days evaluation period.

The Subscriptions Fees could be subject to annual increases, which will be effective beginning upon the first day of each Renewal Term.

The increase amount for each Renewal Term is indicated in the Proposal -Sales Order and is accepted by the Customer with the PO.

Imagicle will notify Customer of any increase prior to its becoming effective; notice may be in a form of a Proposal-Sales Order.

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

If either Party materially breaches any of its obligations under this T&C or under any individual Contract and fails to remedy 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 remedy, then the non-breaching Party may terminate all or any affected Contracts, 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 Contract. If Customer has not remedied a material breach within the applicable remedy period, until Customer has remedied the breach in full, Imagicle may, in its sole discretion, and without prejudice to its other rights following material breach and failure to remedy, (i) suspend performance of some or all of Imagicle's obligations under the applicable Contract, including obligations to provide Imagicle Solutions and Services; and (ii) suspend the

Imagicle Solutions and Services granted pursuant to the applicable Contract. Notice of termination for any individual Contract will not be interpreted to be a notice of termination for any other Contract.

Upon any termination or expiration of a License Term, Customer (i) shall destroy all copies of the Imagicle Solution eventually made in accordance to the allowed use pursuant to the applicable license agreement; (ii) shall immediately destroy and/or return to Imagicle any and all Imagicle's Intellectual Property Rights and/or material containing Imagicle's Property Rights within its custody or control and pertaining the terminated Contract. Each Party shall immediately return or destroy all copies of any Confidential Information of the other pertaining the terminated Contract.

No expiration or termination of this T&C or of any Contract will relieve Customer of its obligation to pay any amounts accruing under such Contract 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 Imagicle Solutions indicating Customer's compliance with the license metrics and other scope limitations applicable to the Imagicle Solutions 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 Proposal – 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 Imagicle Solutions 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 Proposal – Sales Order.

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

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

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

Without formal notice, Imagicle may impose a financial charge of 1.0%, or in the different percentage from time to time permitted by the applicable law, 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 causes 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 Imagicle Solutions under a Free Trial License.

6 Taxes

Unless expressly specified otherwise in any Proposal – 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 Imagicle Solutions to Customer, provision of the Services, or otherwise arising out of or in connection with this T&C, other than taxes based upon Imagicle’s personal property ownership or net income.

7 Warranties

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

For the provision of Imagicle Solutions through Imagicle Cloud (the “Cloud Services”), Imagicle may also use third parties cloud platforms (the “Imagicle Cloud Suppliers”). Imagicle assures that Imagicle Cloud Suppliers are leading international players in the cloud industry.

8 Cloud Services

Cloud Services are on-line, subscription-based products provided as a service, and Imagicle may provide updates to the Cloud Services and Documentation from time to time, in which case earlier version of Cloud Services and Documentation could be no longer accessible. Imagicle reserves the right to make changes to the Cloud Services and, consequently, subject to Imagicle’s obligation to provide Cloud Services under existing PO, Imagicle can discontinue any Cloud Service.

Imagicle undertakes to give an adequate prior notice before discontinuing a material functionality of a Cloud Service, or materially altering a customer-facing API.

Unless otherwise agreed, Imagicle will make Imagicle Solutions offered in cloud available for Customer’s with 99.5% availability, excluded the scheduled maintenance slots. The availability model provides the following Recover Time and Recover Point objectives:

- Public cloud, RTO max 4 hours, RPO max 24 hours
- Dedicated cloud, RTO zero, RPO max 5 minutes

Imagicle does not obtain any rights on the Customer Content. By purchasing Cloud Services, Customer consents Imagicle to use its contents to provide the Cloud Services. The Customer is responsible for its contents. If Imagicle believes any of content violates the law, infringes or misappropriates the rights of any third party, or otherwise violates a material term of the Contract, will notify the Customer of the violation and may request that such content be removed from the Cloud Services or access to it be disabled. If Customer fails to comply with Imagicle’s request within 12 (twelve) hours, Imagicle may remove, disable, or suspend the access to Cloud Services until such breach is corrected, or remove Customer’s contents.

Notwithstanding the foregoing, Imagicle may remove, disable, or suspend access to Cloud Services or remove the Customer contents, without prior notice in connection with illegal content, where the content may disrupt or threaten the Cloud Services or in accordance with applicable law or any judicial, regulatory or other governmental order or request. In this case, Imagicle will provide prompt notice to the Customer unless prohibited by law. Imagicle terminates the accounts of repeated infringers in appropriate circumstances.

Customer is responsible for properly configuring and using the Cloud Services and otherwise taking appropriate action to secure, protect and backup its accounts and its content in a manner that will provide appropriate security and protection. Imagicle is providing embedded backup and integrity management of configuration and contents linked with associated Cloud Services. Imagicle is not responsible of Services configuration and configuration change management, end users privileges applied by Customer.

Upon expiration or termination of the Agreement, Customer shall cease all use of Cloud Services (including Cloud Connected Services used by on premise deployment). Customer acknowledges that its ability to access or use the Cloud Services may be automatically disabled and access to the data is blocked: Customer Data will be kept in the backup for a period of maximum 3 months or as permitted by applicable law. During this period, Customer can request an export of the Customer Data. After this period, in compliance with applicable law, Customer Data will be deleted and cannot be recovered. It is understood that any other mandatory provision of law shall prevail.

9 Limitations of liability

Imagicle will not be responsible for interruptions, delays, and malfunctions in the provision of the Imagicle Solutions and/or Services deriving from the (i) Customer's breaches, (ii) application of specific laws or regulations, (iii) unforeseeable circumstances or force majeure without prejudice to the terms established by mandatory provisions of the law.

The following paragraphs apply to the maximum extent permitted by applicable law.

No Consequential or Indirect Damages: under no circumstances, and notwithstanding any failure of the essential purpose of any remedy set forth herein, shall Imagicle or its suppliers, subcontractors or agents be liable to Customer or any third party under these terms and conditions or under any additional documentation for any consequential, incidental, indirect, exemplary, special or punitive damages, including any damages for business interruption, loss of use, data, revenue or profit, whether arising out of breach of contract, tort (including negligence), strict liability or otherwise, regardless of whether such damages were foreseeable and whether or not Imagicle was advised of the possibility of such damages.

Maximum Liability. In no event, also in case of ascertained and established responsibility, shall Imagicle's aggregate and cumulative liability arising out of or relating to these T&C or any additional documentation or individual contract, whether arising out of or relating to breach of contract, tort (including negligence), or otherwise, exceed the total amount actually paid to Imagicle by Customer in the last 12 months for the Imagicle solutions or services giving rise to the claim. The foregoing limitations shall apply even if the Imagicle's remedies under this agreement fail of their essential purpose.

Customer may not set forth any action in any form (including, without limitation, litigation or arbitration proceedings) arising out of any Imagicle solutions, any services, these T&C or additional documentation or individual contract more than one (1) year after the cause of action has arisen.

10 License and Intellectual Property Rights

Imagicle owns all rights, copyrights, title and interest and, in general, all intellectual property rights (“Intellectual Property Rights” or “IP Rights”) in the Imagicle Solutions and Documentations.

Upon any individual Contract, Imagicle grants the Customer a non-exclusive right to use the Imagicle Solutions in accordance with the applicable license agreement (EULA, SPLA, Imagicle UCX Cloud Suite Service Agreement or NFRLA).

It is understood that the license agreement does not grant to the Customer or third parties any Imagicle IP’s rights.

11 Confidential information

“Confidential Information” means all information communicated by either Party to the other pursuant to or in connection with this T&C or with an individual 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:

(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 T&C 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.

12 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 Imagicle Solutions and related services. Unless otherwise specified in the Proposal – Sales Order, Customer authorizes and will not interfere with the Imagicle Solution's transmission of Enhancement Data to Imagicle. Imagicle may make information derived from its analysis of Enhancement Data publicly available, provided that the publicized information does not include any Enhancement Data that has not been aggregated and anonymized. For the purposes of this T&C, 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.

13 Export control

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

The Imagicle Solutions, 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 does not allow it to export, re-export or release any Imagicle Solutions or Service to specific States, shall not export or release, directly or indirectly, any Imagicle product.

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

14 Variations to T&C

Imagicle may, at its sole discretion, modify these T&C at any time and without notice to You.

However, the T&C applicable to an individual Contract shall always be the one accepted by You at the time a PO is issued. Any changes and/or any new terms and conditions shall become effective as soon as they are posted on the Imagicle website.

15 Governing law, compulsory arbitration, jurisdiction

Any dispute concerning the interpretation and execution of these T&C and/or of any individual Contract, shall be submitted before the Court of Milan (Italy).

The T&C and any individual Contracts shall be governed by the Italian law. The 1980 Vienna Convention on Sale of Good and any other laws governing international sales shall not apply.

16 Assignment

The Customer hereby expressly consents Imagicle to assign any individual Contract to any subsidiary, and/or in the event of a merger or sale of all or substantially all of the stock asset of Imagicle, without further Customer consent. Imagicle will however notify the Customer in case of assignment.

No individual Contract may be assigned, or otherwise transferred, in whole or in part, by the Customer without Imagicle's written consent. If Customer assigns the Contract in conflict with the provisions above, Imagicle may terminate the Contract with immediate effect.

17 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 the Contract, whether written or oral (e.g. telephone).

18 Contacts

For any questions or clarifications, you can contact Imagicle at administration@imagicle.com.

