

# Percepio General Terms

These General Terms apply to (i) the purchase agreement entered into by and between Customer (as identified in the Commercial Proposal) and Percepio or a Reseller, (ii) the Percepio End User License Agreement (EULA), and (iii) the Percepio's General Terms and Conditions Regarding DevAlert Services, as applicable. The parties acknowledge that these General Terms apply to all aspects of those agreements.

## 1. DEFINITIONS

**"Affiliate"** means, in relation to a Party: (i) an organization, which directly or indirectly controls a Party; (ii) an organization, which is directly or indirectly controlled by a Party; or (iii) an organization, which is controlled, directly or indirectly, by the ultimate parent company of a Party. "Control" as per (i) to (iii) above is defined as owning more than fifty percent of the voting stock of a company or having otherwise the power to govern the financial and the operating policies or to appoint the management of an organization.

**"Agreement"** means the Implementation Services Agreement between the Parties, including its cover document executing the Agreement and any appendices identified therein.

**"Commercial Proposal"** a quotation and offer to sell software licenses or services, from Percepio or a Reseller, to Customer, under which these General Terms shall govern the rights and obligations of the parties.

**"Software"** means the proprietary software, hardware and technologies of Percepio and as further detailed in the EULA.

**"Reseller"** means an agent or distributor whom Percepio has granted the right to make a Commercial Proposal.

**"Services"** means services provided by Percepio to Customer, under these General Terms, relating to implementation, configuration, training and use of the Percepio Technology.

## 2. SERVICES

Percepio undertakes to perform the Services in a professional manner and to maintain an organization with employees that are appropriate, qualified and competent to perform the Services. Percepio may engage subcontractors to perform the Services, provided that Percepio shall be liable for a subcontractor's performance as if it was its own.

Percepio is entitled to reimbursement of expenses incurred by Percepio in connection with its provision of the Services, provided that such expenses shall be pre-approved by Customer in each individual case.

Customer shall supply Percepio with all reasonable information that Percepio requests with regard to the performance of the Services.

If Customer wishes to change the nature or scope of the Services, Customer must submit a written request for change to Percepio. Percepio will, within a reasonable time from receipt of a request for change, provide written notification as to whether the change has been accepted and what changes this entails in relation to the Services. The Parties shall conclude a written agreement regarding the change and any agreed financial changes and other terms as a result of the change.

The Percepio maintenance and support plan includes technical support for the Software via e-mail, phone and video conference as well as updates including major

version upgrades for the duration of the subscription of the Software license. Maintenance and support services are made available only after Customer has registered the product Software license at Percepio's website.

## 3. FEES AND PAYMENT

As consideration for the Services provided or SOFTWARE license granted and provided by Percepio, Customer shall pay to Percepio or the Reseller the fees identified in the Commercial Proposal or any other remuneration agreed to in writing between the Parties. Unless agreed otherwise, Percepio or Reseller may invoice Customer accrued remuneration monthly in arrears for Services provided.

Payment terms are twenty (20) days net. Late payment shall carry interest at an annual interest rate of eight percent (8%) from the day on which payment was due until paid in full. Without prejudice to any other remedy, Percepio may upon written notice to Customer withhold performance of further Services or revoke license grants to Software, until Customer has paid all remuneration then due and outstanding.

All remuneration under the Agreement is exclusive of all taxes (including VAT and withholding taxes), duties, levies or other charges of any kind.

## 4. INTELLECTUAL PROPERTY RIGHTS

Nothing in the Agreement shall affect a Party's rights to its pre-existing intellectual property owned or controlled or developed by a Party and without reliance on information of the other Party nor imply grant of any license to such background intellectual property unless expressly agreed otherwise in writing between the Parties.

Percepio shall retain all right, title and interest in and to the Software (including any intellectual property rights therein), as well as any modifications or improvements to any of the foregoing, regardless of whether Customer has provided feedback regarding such modifications or improvements.

Customer shall retain all right, title and interest in and to any technology owned or controlled by Customer (including any intellectual property rights therein), as well as any modifications or improvements to any of the foregoing, regardless of whether Percepio has provided feedback regarding such modifications or improvements.

Customer shall not make derivative works of, disassemble, reverse compile or reverse engineer any part of the Percepio Technology, or access the Percepio Technology in order to build a similar or competitive product or service (or contract with a third party to do so).

## 5. CONFIDENTIALITY

Each Party agrees, in the event it receives confidential information of the other Party or its Affiliates to take all reasonable actions to protect and hold such information in confidence in order to prevent its disclosure to third parties, to use such confidential information only for those purposes contemplated under the Agreement and to disclose confidential information only to its Affiliates and employees on a need-to-know basis. The obligations of each Party under this Section 5 shall survive for five (5) years after the expiration or termination of the Agreement.

Notwithstanding the previous para., the recipient shall have no obligations with respect to any portion of the received information which:

- a) is or becomes available to the public without the fault of the recipient;
- b) is already rightfully known to the recipient free of any obligation of confidentiality, at the time of

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disclosure, as evidenced by the recipient's written records or is subsequently rightfully received by the recipient from a third party with no obligation of restriction on further disclosure;

- c) is independently developed by the recipient as evidenced by its written records; or
- d) is required to be disclosed to comply with applicable law or a judicial order and the disclosing Party is given timely and non-prejudicial notice of the demand for such disclosure, to the extent possible.

The receiving Party is permitted to disclose confidential information if required to be disclosed by the rules and regulations of any recognized stock exchange upon which the receiving Party's or its Affiliates' stock is quoted or by the disclosure requirements for a publicly-traded company under applicable securities laws, provided that the receiving Party gives prompt written notice to the disclosing Party of the extent of the disclosure prior to such disclosure and discloses only that portion of confidential information which is legally required to be furnished.

## 6. DISCLAIMER; LIMITATIONS OF LIABILITY

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, PERCEPIO DISCLAIMS AND EXCLUDES ALL WARRANTIES, CONDITIONS AND OTHER TERMS IMPLIED BY STATUTE, COLLATERALLY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OF THE SOFTWARE AND THE SERVICES.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR ANY LOSS OF REVENUE, PROFITS, USE OR DATA ARISING UNDER THE AGREEMENT. THIS SECTION DOES NOT APPLY TO CUSTOMER'S CONTRACTUAL PAYMENT OBLIGATIONS.

PERCEPIO'S MAXIMUM LIABILITY UNDER THE AGREEMENTS IS PROVIDED IN THE EULA.

## 7. FORCE MAJEURE

Performance by either Party of its obligations under the Agreement shall be excused for a period that is reasonable under the circumstances if failure or delay thereof is caused by any unforeseeable events or circumstances beyond such Party's control which could not have been reasonably foreseen or reasonably circumvented after occurrence, such as changes in laws and regulations or in the interpretation thereof, acts of authorities, war, acts of war, terrorism, labor disputes, blockades, major accidents and currency restrictions.

A Party wishing to claim relief by reason of Force Majeure shall notify the other Party in writing without delay on the intervention and on the cessation thereof. If performance by either Party is delayed for a period three (3) months or more, the other Party may terminate the Agreement.

## 8. TERM AND TERMINATION

An agreement for the provision of Services shall be effective on the effective date and remain in effect during the Term of such agreement unless such agreement is terminated earlier as provided herein. An agreement for license grants to the Software is effective when Customer has (i) issued and provided Percepio with a purchase order or similar, and (ii) upon delivery of the Software from Percepio to Customer, Customer has registered the

product and license at Percepio's website, and in doing so, accepted these General Terms and the EULA.

If either Party commits a material breach of the agreements and fails to cure such breach within thirty (30) days after receiving written notice of such breach, the non-breaching Party, at its option, may by written notice to the breaching Party terminate the agreement, except termination shall not be effective with respect to those provisions which expressly survive termination of the agreement. The termination shall be effective upon the receipt of the termination notice.

Either Party may terminate the agreement immediately by providing written notice to the other Party if the other Party becomes insolvent, if a petition in voluntary or involuntary bankruptcy is filed by or against the other Party under any insolvency, bankruptcy or winding up laws of the place of incorporation of the relevant Party.

Termination of the agreement shall be without prejudice to any remedy either Party may have against the other Party for breach of this Agreement.

## 9. MISCELLANEOUS

Neither Party may in any respect represent the other Party nor enter into any agreement or other commitment on the other Party's behalf. Nothing herein shall be construed to, nor create the relationship of principal and agent, or employer and employee, or partnership, or joint venture between the Parties.

These General Terms and such other terms and conditions set forth in the agreements constitute the entire understanding and agreements between the Parties with respect to its subject matter and supersede any previous understandings or agreements between the Parties, whether written or oral, regarding such subject matter. The provisions set forth in the agreements shall prevail should there be any inconsistency between the foregoing and these General Terms, with the exception of a Customer standardized Purchase Order, in which these General Terms shall govern.

The provisions of the agreements are severable and should any provision of the agreement be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions of the agreements, provided that the essential purpose of the agreements is not frustrated.

The failure of either Party to assert a right under the agreements or to insist upon compliance with any term or condition of the Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other Party.

Neither the agreements nor any of the rights or obligations arising hereunder may be assigned or transferred by either Party (including, without limitation, by operation of law) without the prior written consent of the other Party.

## 10. GOVERNING LAW AND DISPUTES

The Agreement shall be construed in accordance with and be governed by the laws of Sweden, without reference to its conflict of laws principles.