

## GENERAL PURCHASING CONDITIONS OF SMARTEC SA

### 1. *Definitions*

- 1.1 **Purchase Agreement** means these General Purchasing Conditions, the Purchase Order form and other documentation referred to in the Purchase Order form. Any other terms, whether attached to Supplier's acceptance of the Purchase Order or otherwise, shall not be applicable. Supplier's performance of the supply shall be deemed acceptance of these terms.
- 1.2 **Supply** means all items to be provided under this Purchase Agreement whether raw materials, processed materials, fabricated products, services, drawings and other applicable documentation.
- 1.3 **Supplier** means the Company stated on the Purchase Order Form.
- 1.4 **Purchaser** means SMARTEC SA
- 1.5 **Price** means the total amount payable to the Supplier in accordance with the provision of this Purchase Agreement.
- 1.6 **Force Majeure** means an occurrence beyond control of the party affected, provided that such party could not reasonably have foreseen such occurrence at the time acting into the Purchase Agreement or could not reasonably have avoided or overcome the consequences.

### 2. *General*

- 2.1 These General Purchase Conditions are applicable for all SMARTEC's orders to our Suppliers.
- 2.2 The Suppliers acceptance of the order implies unconditional agreement to these general conditions, and Supplier agrees that such terms and conditions shall not be modified by any terms and conditions contained in any delivery order, acknowledgement, invoice or other business forms used by Supplier issued before, during or after this Order or any possible follow-up business, notwithstanding Purchaser's signature of the same. Oral side agreements as well as the exclusion, modification of and/or additions to these General Purchasing Conditions shall require the express written confirmation of Purchaser to take effect.

### 3. *Orders*

- 3.1 SMARTEC's Purchase Orders are given in writing only.

### 4. *Acknowledgement of Order*

- 4.1 The Supplier must acknowledge the order within 3 days after receipt. The order must be acknowledged by signing, dating and returning a copy of SMARTEC's purchase order. A failure to do so gives the Purchaser the option of canceling the order.

### 5. *Quality Assurance*

- 5.1 The Supplier shall have an established and implemented Quality System in accordance with NS-EN ISO 9001/9002/9003 or equivalent, depending on the nature of the Supply.
- 5.2 Purchaser or its representative shall have the right to undertake quality audits and verifications of Supplier's or any subcontractor's quality system.
- 5.3 The Supplier shall examine the different parts of the Purchase Agreement, and shall without unnecessary delay notify Purchaser in writing of faults, omissions or inconsistencies discovered.

### 6. *Inspection / Verification*

- 6.1 Purchaser or its representative shall have the right to undertake necessary inspections and verifications of the Supply at the Supplier's premises and/or any of his subcontractor's premises.
- 6.2 The abovementioned inspections and verifications do not exempt the Supplier from the responsibility to deliver the Supply in accordance with the Purchase Agreement, nor shall it preclude subsequent rejection, which right is reserved by Purchaser for any failure of the Supplier to comply with the Purchase Order and all specifications.
- 6.3 Payments of Purchaser shall in no case mean an acknowledgment of perfect performance according to the rules of the art in the sense of an acceptance.

### 7. *Delivery Period, Delayed Delivery*

- 7.1 The delivery period given in the order shall be binding. Early deliveries and/or partial deliveries shall require the express written approval of Purchaser.
- 7.2 If the Supplier has reason to believe that the Supply or any part of it may be delayed, he shall immediately notify Purchaser in writing. The Supplier shall in such notice give the Purchaser information of the reason and extent of the delay together with the efforts the Supplier will make in order to avoid, limit or recover the delay.
- 7.3 If the Supply is delayed, the Purchaser may terminate the order, and no sums shall be due to Supplier for non-delivered items. Should Purchaser agree to accept any late delivery Supplier shall pay penalty to the Purchaser for such accepted late items. The penalty shall be 0.2% of the Price per calendar day, but limited to 15% of the Price. Assertion of further claims due to delay (including the right to cancel the contract and/or claim damages instead of performance of work) shall not be excluded by this. The right of Purchaser to claim the contract penalty shall continue until final invoicing / payment even if this has not been reserved at the time of acceptance of the work.

### 8. *Variations*

- 8.1 Purchaser has the right to order variations to the Supply. Such variations may include an increase or reduction in the quantity, character, quality, kind, features and characteristics of the Supply or part thereof and adjustments to the schedule. Such variations shall be reasonable with respect to the capacity available and shall not be in conflict with the Supplier's obligations in accordance with the Purchase Agreement.
- 8.2 If the variation should cause a change in the extent or the time for the completion of the Supply, the price and schedule shall be changed accordingly, and a document called Variation Order showing all necessary details shall be issued and signed by both parties.
- 8.3 If Supplier believes a variation is made to the supply, and a Variation Order has not been issued by the Purchaser, Supplier must give written notice to Purchaser within five days of the date Supplier believes the variation was ordered. The Supplier shall not commence the variation work until an order in writing is received from the Purchaser.

### 9. *Marking and Packing*

- 9.1 All crates and packages shall be packed and preserved for transport in a manner that will prevent damage and deterioration during handling and transportation.
- 9.2 Each part of the shipment shall be addressed as shown in the Purchase Order, and marked with: Purchase Order Number, Number of the package and total number in the shipment (e.g. 1 of 3).
- 9.3 All documents shall be properly marked with the Purchase Order Number and an unique Identification Number. Originals shall be mailed separately and one copy shall follow the shipment in a separate envelope.
- 9.4 Customs documents on international shipments, forwarded with the Carrier, shall contain: Two copies of the invoice; one copy of the Packing List; European Movement Certificate (EUR.1) for transportation of goods between EEC and EFTA; Procedures for handling, storage and preservations shall be forwarded to the Purchaser in due time to prevent any damage to the Supply.

### 10. *Delivery Terms*

- 10.1 Terms of delivery shall be in accordance with Incoterms 1990. Delivery shall be DDP SMARTEC SA, Manno, unless otherwise stated in writing in the Purchase Order. When a Supply is ready for shipment, the Supplier shall report weight, dimension and number of packages to the Purchaser.

### 11. **Guarantees**

- 11.1 The Supplier guarantees that the Supply is in accordance with specified requirements and are suitable for the intended purpose and use. Supplier shall warrant that his services comply with the recognized rules and the latest state of engineering as well as the standards, regulations and codes applicable in the country of Supplier and in the country of destination (including safety, labor protection, and accident prevention regulations), have the agreed qualities, the guaranteed characteristics and besides are free of fault and deficiencies in title.
- 11.2 The Purchaser's approval of drawings, calculations and other documents shall not affect the sole responsibility of the Supplier for the supplies sold. This shall also be applicable to proposals, recommendations and other contributions by Purchaser.
- 11.3 Unless otherwise stated in the Purchase Agreement, the guarantee period for the Supply expires one year from the date the Supply is taken into use, limited to two years from the date of delivery.
- 11.4 If the supplies are found to be in breach of the abovementioned guarantee conditions, Purchaser may, at his discretion, request Supplier to repair deficiencies or provide replacement: Supplier shall bear all expenses required for the repair of deficiencies or the provision of replacement. After due information of Supplier, Purchaser shall also be entitled to repair deficiencies himself, at the expense of Supplier, in case of imminent danger or special urgency or if a grace period previously granted to him for the repair of deficiencies elapsed unsuccessfully or performance failed or if this appears appropriate to reduce damage.
- 11.5 If the Supplier has performed guarantee work during the guarantee period, the Supplier shall guarantee this work for a period of one year from the date of completion of the guarantee work.
- 11.6 Supplier shall warrant that spare and wear parts will be available for every order for a period of at least 10 years after the end of the warranty period.

### 12. **Product liability, Indemnification, Insurance Cover**

- 12.1 Provided that Supplier is responsible for a product defect or infringement of legal/official safety regulations, he shall indemnify Purchaser, on first request, for possible claims of damages by third parties. Moreover, Purchaser shall be entitled to reimbursement of all expenses incurred by Purchaser, in particular in conjunction with recall actions caused by him as a result thereof; Purchaser shall inform Supplier in advance of the type and scope of recall actions, as far as possible and reasonable. Further legal claims shall be reserved. This shall apply accordingly in the event that product defects are attributable to work of sub-contractors or sub-suppliers of Supplier.
- 12.2 Supplier shall be obliged to maintain sufficient insurance cover for product liability and to furnish at any time written proof to Purchaser on his request, especially by written confirmation of the insurer of Supplier.
- 12.3 The Supplier agrees to indemnify and to hold Purchaser, its agents, employees, officers, subsidiaries, associated companies and assigns harmless from and against any liability, damage, loss, cost or expense, including without limitation any liability arising from any injury or loss to any person or persons or any damage to or loss of any property, directly or indirectly arising out of or in connection with any act or omission in the performance of or in connection with any or all of the obligations undertaken by the Supplier pursuant to the Purchase Agreement, whether by reason of the negligence of the Supplier, its agents, employees or sub-Suppliers or their agents or employees, or otherwise any alleged fault or defect howsoever arising in the work or supply (whether in materials, workmanship or otherwise); except to the extent that any such liability was only incurred because the Supplier delivered the work solely in accordance with designs, plans or specifications supplied by Purchaser.

### 13. **Invoicing and Payment**

- 13.1 Unless otherwise agreed, the Supplier shall invoice Purchaser following delivery of the Supply, and the Purchaser shall pay accepted invoices either within 30 days after receipt with deduction of 2% discount, or within 60 days net. The terms of the payment period shall be determined from the date the invoice is received by the Purchaser.
- 13.2 All invoices must contain a reference to SMARTEC's Purchase Order Number.
- 13.3 Invoices which do not conform to these Purchasing Conditions or to the specifications of the Purchase Agreement, or which do not refer to a SMARTEC's Purchase Order Number are not valid and will be returned.
- 13.4 Delay after the due date shall only arise on the basis of an express reminder. In the event that the delay in payment of Purchaser should be based on simple negligence, penalty interest shall be limited to 3 percentage points beyond the basic interest rate in Switzerland.
- 13.5 Disputes regarding the amount to be paid to the Supplier shall not entitle Supplier to stop his services as a whole or in part, not even temporarily.

### 14. **Force Majeure**

- 14.1 The party affected by Force Majeure shall as soon as possible, but not later than three working days after occurrence of such a situation, notify the other party in writing that a Force Majeure situation has occurred. If a Force Majeure situation continues without interruption for a period of 10 days, or more, each of the parties shall be entitled to terminate the Purchase Agreement by notifying the other party in writing.

### 15. **Termination of the Purchase Agreement**

- 15.1 Purchaser has the right to terminate this Purchase Agreement at any time with immediate effect by giving written notice to the Supplier, if the Supplier becomes insolvent and/or if there is any breach of the Purchase Agreement by the Supplier, or if Purchaser has reason to believe Supplier will be in breach of the terms of the Purchase Agreement.
- 15.2 Neither of the parties shall have the right to make claim against the other party due to consequential losses caused by the termination of the Purchase Agreement, unless due to non-conformance of the Supply to the terms of the Purchase Agreement. In such event no sums shall be due by Purchaser to Supplier, and Supplier shall have the right to procure the Supplies from a third party and charge Supplier with any increase in cost to Purchaser.

### 16. **Cancellation**

- 16.1 Purchaser has the right to cancel the Supply at any time by giving written notice to the Supplier. In the event of such cancellation, Supplier shall cancel all sub-contracts and Purchaser shall pay only necessary documented direct costs incurred by the Supplier in connection with the cancellation.

### 17. **Patents and Trademarks**

- 17.1 The Supplier is responsible for and shall defend, indemnify and hold Purchaser harmless from and against any claims, damages, losses, expenses and the like on the account of any infringement of Patent, Registered Design, Trade Mark etc. in conjunction with his/her execution of the work and the Purchaser's use of same.

### 18. **Confidentiality**

- 18.1 All drawings, calculations, information on the existence, extent and object of the delivery and other information which the Supplier may receive from the Purchaser for the purpose of carrying out the work are proprietary to Purchaser and shall be treated by the Supplier as trade secret and may not be used for any other purpose, duplicated or made available to a third party. The Supplier is liable for any inconvenience and loss suffered by the Purchaser by such and infringement.
- 18.2 The Supplier, if so requested, shall immediately return all such material together with all copies and duplicates.
- 18.3 The use of orders for reference and/or publicity purposes shall require the prior written approval of Purchaser.

### 19. **Disputes**

- 19.1 This Purchase Agreement shall be governed by and construed in accordance with Swiss law. Any disputes arising out of or in connection with the Purchase Agreement which cannot be solved out of court, shall be solved by arbitration. Any court proceeding will be brought before Lugano City Court.