

# Sojitz Europe Plc Paris Branch General Conditions of Purchase

## 1. Scope of Application

- (1) The terms and conditions set out below form part of our order, and will form a part of our future orders to be placed with the supplier unless we state otherwise therein.
- (2) Herewith we object to any supplier's conditions unless we agree to them in writing. We do not accept the supplier's sales conditions even if we do not object to them explicitly after we have received them or if we, being fully aware of any supplier's adverse conditions, unconditionally accept the delivery or pay for the delivered goods.
- (3) Any amendments or modifications to the purchase contract as well as any collateral agreements are only valid if agreed in writing.

## 2. Order

This order constitutes an offer on our part which can be accepted by written confirmation or actual performance of the order within 14 days after the date of order. We reserve the right to cancel this order

- a) at any time before we have received the supplier's written and entire acceptance of all terms of this order; or
- b) within 14 days after we have received the supplier's written acceptance if such acceptance is received more than 15 days after this order.

## 3. Delivery

- (1) Our delivery destination and delivery dates stipulated in the order are binding.
- (2) In the event of the supplier's delay in delivery, we have the right
  - (a) to claim damages occurred due to the delay or
  - (b) to set a final deadline to perform the contract and if the contract will not be fulfilled before this deadline has expired
    - (aa) to claim damages for non-performance and/or
    - (bb) to cancel the contract after the final deadline has expired.

This choice shall be without prejudice to any other contractual or statutory rights or remedies available to us.

- (3) Unless otherwise agreed upon, partial delivery of the goods and transhipment shall not be permitted.
- (4) The supplier is responsible for an appropriate packaging for the goods in order to avoid any damage due to transportation, taking into account of the mode of transportation to be used.
- (5) If the contract is concluded on a C.I.F. or C.F.R. basis, shipment of the goods shall take place within the time stipulated in the order. The supplier is obliged to take appropriate steps in a timely manner so that the required shipping space can be made available at the agreed time.
- (6) In case of transport of the goods by sea the supplier provides transportation by a 1<sup>st</sup> class company approved by us and by the usual route unless otherwise agreed upon.
- (7) Immediately upon shipment, the supplier shall give us a written notice of the details of shipment, including the contract number, description of the goods and packaging, quantity loaded or despatched, expected or estimated time of arrival of goods at the specified destination.
- (8) The supplier is responsible for obtaining any export or import licences as well as any other governmental approvals or permissions which will be necessary to perform this contract.
- (9) If the supplier fails to effect the delivery instructions as specified above it shall bear the additional costs which are necessary to ensure that the goods arrive at the agreed destination and time.

## 4. Price and Payment

- (1) The supplier is bound to the tender prices on which this order is based. The supplier may only increase prices if we have been informed in time before the actual delivery and we have consented in writing.
- (2) The price shall be a fixed price including packaging, taxes, duties and other levies. In the event the goods are subject to purchase tax or value added tax, the tax amount is to be rendered as a separate item of account.
- (3) If freight, insurance premium or other additional costs have been increased at the time of shipment or will be changed due to unexpected circumstances occurring after this contract has been entered into such additional costs shall be borne by the supplier.
- (4) In the event that payment is to be made by letter of credit established on our account and the terms of such letter of credit do not conform to the terms of this contract, the supplier shall request us to amend the terms of the letter of credit immediately after receipt of notice from our bank. If the supplier shall not do so, any non-conformity shall be on the supplier's account.
- (5) All bank charges shall be borne by the supplier.
- (6) We reserve the right to set off any claims of the supplier against any claim we have against the supplier. The supplier is not entitled to any set-off unless the counterclaims are undisputed or have been fixed by non-appealable court decision.

## 5. Force majeure

- (1) In the event of force majeure including but not limited to acts of God, war, blockade, embargo, insurrection, mobilisation or any actions of government authorities, riots, civil war, warlike conditions, strikes, shortage or control of power supply, plague or other epidemics, quarantine, storms, earthquake, thunderstorm, explosion, or any other comparable circumstances beyond our control, our liability shall be excluded.
- (2) The above provision also applies in the event that the supplier is (or we can demonstrate that the supplier should be) aware of our customer to whom the goods will be resold, and if a resale contract with such customer is being cancelled, delayed due to a case of force majeure or any other comparable event beyond our or our customer's control which occurs on our or our customer's side.
- (3) In either case of (1) or (2) above, we shall be entitled to reasonably delay the date of delivery. If a delay will last more than eight weeks both, we and the supplier, shall have the right to cancel the contract.

## 6. Insurance

In the event the goods transported are insured by the supplier, for example if the contract is based on CIF (costs, insurance, freight), CIP (carriage insurance prepaid), CFR (costs and freight), CPT (carriage prepaid), DAP (delivered at place); or DDP (delivered duty paid), goods shall be insured at a value equal to 110 % of the value under the agreed trade terms.

## 7. Passing of Risk and Property

- (1) Risk of damage to or loss of the goods shall only pass to us after they have been offloaded at the place of delivery agreed upon.
- (2) Property in the goods passes to us when they have been offloaded at the place of delivery agreed upon. In case payment has been effected before the goods have been delivered the supplier is obliged to individualise the goods to be delivered and store and transport them separately from other goods on our behalf. In these cases property in the goods passes to us as soon as they have been paid and individualised.  
In case the goods are delivered under reservation of title the supplier shall only be entitled to claim possession after withdrawing from this contract.

## 8. Warranty

- (1) The supplier warrants that all the goods shall adhere to the specifications laid down in the order and in the absence of such specification shall be of merchantable quality and fit for the purpose of the contract.
- (2) The supplier further warrants that all goods shall be free from defects in materials and workmanship and conform with all quality standards and specifications concerning the

manufacture, packaging, packing, transportation and delivery of the goods prescribed by us, especially if determined in descriptions, drawings or other data carriers. Unless otherwise agreed, the goods shall comply with all applicable regulations and legal requirements of the country of destination. The supplier especially guarantees installation sheets and operating instructions being up to the standards of the market of the country of destination. Deficiencies in installation sheets or operating instructions shall be classified as defects of the goods.

- (3) In addition, to the legal warranty for defects and hidden defects, a contractual warranty period of 24 month from date of delivery shall be applicable. Any notice of defect does interrupt the warranty period for the defective delivery. In case of a substitute or subsequent delivery the contractual warranty period starts anew.
- (4) If we discover the delivered goods to be defective, supplied in less quantity than ordered or to have been otherwise delivered incorrectly the supplier is obliged to replace the defective goods immediately with defect-free goods. If the supplier does not comply with this obligation we shall be entitled – at our choice - to reject all or some of the goods and wholly or partially withdraw from this contract or keep the delivered goods and demand repair or a reduction of the purchase price. Our statutory warranty rights remain unaffected.
- (5) The supplier is obliged to bear all costs and expenses incurred for purposes of remedying defects or substitution of the goods. Our right to claim damages, especially damages due to non-performance remains unaffected.
- (6) Any payment for goods by us shall not constitute a waiver of claims.

## 9. Intellectual Property/Indemnity

- (1) The supplier warrants that the delivered goods are free of third parties' claims and rights, especially third parties' security interests, and that neither the delivery nor the use of the goods infringe any patent rights, trademark rights, registered design rights, copyrights, licence or other third parties' rights.
- (2) The supplier shall indemnify us and/or our customers and hold us and/or our customers harmless from and against any liability towards a third person from any claims and infringement of third party's rights as mentioned 9(1) above.
- (3) The supplier shall further indemnify us and/or our customers and hold us and/or our customers harmless from and against any liability towards a third person arising from defects or non-performance of the warranty imposed by condition 8 (1) and (2) as well as consequential harms caused by a defect of the goods delivered by the supplier and claims in respect of product liability.
- (4) The obligation to indemnification and reimbursement does not apply if the underlying incident can be proven to result from our gross negligence or intentional misbehaviour.
- (5) The supplier is obliged to reimburse all payments to us which we have made to satisfy justified claims from our customers or third parties with respect to the sold products provided the sold products have not been altered in a manner that affects their quality or fitness after the purchase by us and/or by our customers.

## 10. Termination

- (1) If the supplier is in breach of one of the conditions of the contract or any other contract with us we shall be entitled to terminate the contract entirely or partially by giving written notice to the supplier if the supplier does not subsequently perform its relevant duty within an appropriate final deadline set by us.
- (2) In case the delivery date has been explicitly agreed upon on a fixed-date-basis and the supplier fails to deliver on the fixed delivery date we shall be entitled to cancel the contract prior to delivery or within 14 days after the delayed delivery with immediate effect.
- (3) To the extent permitted by any applicable law, we shall further be entitled to terminate the contract with immediate effect in the event that bankruptcy or insolvency proceedings are instituted over the supplier's assets or we reasonably consider the institution of such proceedings imminent. This also applies in the event that, in case the supplier being a partnership, any partner in that firm becomes bankrupt or over-indebted or the supplier concludes any debt-rescheduling with any of its creditors or if circumstances occur after the contract has been concluded which reasonably suggest that the supplier will not be able to perform its obligations under this contract. This does not apply if the supplier provides a sufficient security for the fulfilment of its obligations.
- (4) If the contract is terminated the supplier shall immediately refund all money already paid by us. After termination we refuse to accept further delivery of goods. We shall have the right to store the goods already received at the supplier's risk and expense until the supplier organises the return of the goods at its expenses. In this event the supplier shall be liable for any loss or damage arising from such storage and return transportation. If storage or return of goods is not possible for whatever reason we shall be entitled to sell goods that have already been delivered on supplier's account. If applicable the proceeds may be used as compensation for damages caused by the events described above.
- (5) Our right to claim damages for non-performance due to the supplier's breach of contract, either instead of or additionally to the termination, remains unaffected. This includes damages for loss of profit which we would otherwise have made on a subsequent resale of the goods. Costs for checking and sifting through the defective goods are to the supplier's account. We may also refuse the delivery of the goods and execute a covering purchase on the supplier's account. In such an event the supplier shall pay us compensation for additional costs and for damages caused by its default.

## 11. Assignment

The supplier shall not without our prior written consent assign any of its rights or transfer any of the supplier's obligations under this contract to a subcontractor if not named in this order. Supplier does hereby assign to us all its claims against its suppliers in case of delivery of defective goods.

## 12. Secrecy

The supplier shall treat this contract and all drawings, designs, specifications and other information supplied herewith as confidential and shall not disclose the same to any third party without our written consent or infringe any of our property rights or beneficial interests.

## 13. Governing Law and Jurisdiction

- (1) This contract shall be governed by French law excluding the UN Convention on contracts for the International Sale of Goods (CISG). In case of doubt about the interpretation of the trade terms, Incoterms applicable at the time of the order shall be decisive.
- (2) Should any disputes arise in connection with this contract, the courts at the place of our office as shown on the order shall have jurisdiction. We are also entitled to sue the supplier at the place of its registered office. In respect of any actions brought by the supplier, the courts at the place of our office shall have exclusive jurisdiction. The legal provisions relating to exclusive jurisdiction shall remain unaffected.

## 14. Saving Clause/Miscellaneous

- (1) If we waive our right to enforce any of our claims this does not mean that we waive further claims arising from this contract.
- (2) If any provision of this contract is held to be invalid or unenforceable, the validity of the other provisions of this contract shall not be affected.
- (3) We are entitled to save and use data within the range of the business relations with supplier in accordance with the applicable data protection law.
- (4) In case of any interpretation discrepancies between the French and the English version the French version shall prevail.