

Conditions of Purchase of Sojitz Europe plc Madrid Branch

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 Suppliers 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 even 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 contract as well as any collateral agreements are only valid if agreed in writing.
- (4) These terms and conditions fall under the scope of the Spanish Act on Contracts subject to General Conditions ("Ley 7/1998, de 13 de abril, sobre Condiciones Generales de la Contratación") and therefore the signature of the Supplier at the bottom of this document evidences (i) that these terms and conditions have been fully disclosed to the Supplier, (ii) that the Supplier has been informed of the contents of these terms and conditions and (iii) that the Supplier has accepted them and adhered to them entirely, so that these terms and conditions form a binding part of the agreement entered into by and between the Supplier and ourselves.

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:

- (i) at any time before we have received the Supplier's written and entire acceptance of all terms of this order; or
- (ii) 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 dates stipulated in the order are binding.
- (2) In the event of Supplier's delay in delivery, we have the right
 - (i) to claim damages occurred due to the delay;
 - (ii) to set a final deadline to perform the contract and if the contract will not be fulfilled before this deadline has expired;
 - (iii) to claim damages for non-performance; and/or
 - (iv) 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 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 1st 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.
- (10) Should the Supplier fail to meet the delivery deadline set forth in our order, we shall be entitled to choose between seeking the termination of the contract or its full enforcement, notwithstanding, in both cases, our right to seek a compensation for the damages (either of direct, indirect or consequential nature) and loss of profit resulting from the Supplier's breach of contract.

4. Price and Payment

- (1) Supplier is bound to the tender prices on which this order is based. Supplier may not increase prices.
- (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 charged 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, Supplier shall request us to amend the terms of the letter of credit immediately after receipt of notice from our bank. If Supplier shall not do so, any non-conformity shall be on 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, subject to the provisions set forth in articles 1.195 et seq. of the Spanish Civil Code. 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 for non-performance or other defaults on our side as well as our liability for any other consequential loss 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 receipt. 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 Supplier, for example if the contract is based on CIF (costs, insurance, freight), CIP (carriage insurance prepaid), CFR (costs and freight), CPT (carriage prepaid), DDU (delivered duty unpaid); 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 if this agreement is judicially declared to be terminated and cancelled due to a material breach of contract on our side.

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) We shall be entitled to reject the delivered goods within the 30 days following its delivery, with no need to claim or prove any specific defect or defective performance, provided that the delivered goods were not available to us for inspection when we placed our order or if the quality or nature of the goods could not be assessed when we placed our order because the goods were not suitable of being classified by reference to a standard type or quality.
- (4) Pursuant to article 328 of the Spanish Commercial Code, we reserve the right to test the delivered goods within the 15 days following its receipt. Should the outcome of our test not be positive, we shall be entitled

to reject the delivered goods within the 30 days following its delivery, with no need to claim or prove any specific defect or defective performance.

- (5) A contractual warranty period of 24 months 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 statutory warranty period starts anew. The provisions of article 342 of the Spanish Commercial Code and article 1490 of the Spanish Civil Code shall not apply.
- (6) 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.
- (7) 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.
- (8) Any payment for goods by us shall not constitute a waiver of claims.
- (9) We are entitled to assign in favour of the purchasers and / or end-users of the products our rights under the warranty conditions set forth in this clause. Thus, the purchasers and / or end-users of the products shall have the right to request directly from the Supplier the enforcement of the warranty obligations laid down in this clause, provided that they can evidence their legal title to the products.
- (10) The Supplier shall be liable for defective products, even if it can be proved that the Supplier was unaware of the defects.
- (11) Should we be informed of any claim to be brought against us by a third party based on an alleged preferential title to the products which may result in us being dispossessed of the products, we shall be immediately entitled to withhold any amounts owed to the Supplier, either as part of the price of sale or otherwise, for as long as the claim is not withdrawn or dismissed by arbitration award or final court decision.

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) Supplier shall indemnify us and hold us harmless from and against any liability towards a third person from any claims and infringement of third party's rights as mentioned in paragraph 9(1) above. Should we be informed of any claim to be brought against us by a third party based on an alleged infringement of intellectual property relating to the products, we shall be immediately entitled to withhold any amounts owed to the Supplier, either as part of the price of sale or otherwise, for as long as the claim is not withdrawn or dismissed by arbitration award or final court decision.
- (3) The Supplier shall further indemnify us and hold us 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 or our vicarious agents' grossly negligent or intentional misbehaviour.
- (5) The Supplier is obliged to reimburse all payments to us which we have made to satisfy justified claims.

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 as soon as we are informed that the agreed delivery date will not be complied with or within 14 days after the delayed delivery with immediate effect. Notwithstanding our right to request the termination of the contract, we may also seek a compensation for the damages and loss of profit resulting from the Supplier's breach of contract.
- (3) We shall further be entitled to terminate the contract with immediate effect in the event that 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. By way of example, the following are some of the circumstances that shall be construed as an event where the Supplier shall not be able to perform its obligations:
 - (i) If the Supplier is in default in any other agreement or contract entered into with us or with any other parent, subsidiary or affiliated company;
 - (ii) If a judicial seizure order is handed down against the Supplier for a total amount higher than 15% of its total assets value;
 - (iii) If the Supplier enters into a work-force restructuring process that affects more than 20% of its total number of employees;
 - (iv) If the Supplier appears listed in one of the debt default registries used by banks and other credit and financial institutions with more than 5 active entries or with active entries whose total value is higher than 15% of the Supplier's total assets value.

The above shall 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. In this event the Supplier shall be liable for any loss or damage arising therefore. If storage 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 defected goods are to the Supplier's account. We may also refuse the delivery of the goods and execute a covering purchase on 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

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. Confidentiality

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 Spanish 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. Place of performance for delivery and for services of this contract is the place of destination determined by us.
- (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 data protection regulations.
- (4) In case of any interpretation discrepancies between the Spanish and the English version the Spanish version shall prevail.

Signature of the legal representative of the Supplier for the purposes set forth in the Spanish Act on Contracts subject to General Conditions ("Ley 7/1998, de 13 de abril, sobre Condiciones Generales de la Contratación")

The SUPPLIER

Firmado por Don / Doña -----

Actuando en su condición de -----

De [nombre de la empresa]