

## **GSM GENERAL SALES TERMS AND CONDITIONS**

The Purchase Order, together with these General Sales Terms and Conditions, and any attachments, whether physically attached or incorporated by reference, constitute the entire and exclusive agreement between GSM Systems, Ltd. ("GSM") and the buyer ("Customer") identified in the Purchase Order. It sets forth and shall constitute the entire agreement between Customer and GSM with respect to the subject matter thereof, and shall supersede any and all prior agreements, understandings, promises and representations made by one party to the other concerning the subject matter herein.

### **1. PRICE AND PAYMENT**

- 1.1** All Products are sold and all prices are quoted Ex-works in accordance with Incoterms 2000, unless another place of delivery is agreed to in writing by GSM.
- 1.2** All sales, use, import, excise and like taxes, whether foreign or domestic, shall be charged to and borne by Customer. GSM bears no responsibility for any consular fees for legalizing invoices, certificates of origin, stamping bills of lading, or other charges required by the laws of any country of destination, or any fines imposed due to incorrect declarations. Charges will be added for non standard factory preparation and packaging for delivery. If by reason of any act of government, the cost to GSM performing its obligations hereunder is increased, such increase shall be added to the quoted price.
- 1.3** The prices are exclusive of VAT or similar tax, unless otherwise mentioned in the Purchase Order.
- 1.4** Prices are quoted and payments shall be made in US DOLLARS unless stated otherwise in the Purchase Order.
- 1.5** If any undisputed monies are not paid by the due date, then GSM may charge interest on such undisputed monies on a day to day basis from the date payment fell due, to the actual date of payment (both dates inclusive) at the rate of one and one-half percent (1.5%) per month.

### **2. TITLE AND RISK, DELIVERY, TRANSPORTATION, STORAGE AND INSURANCE**

- 2.1** Partial delivery may be made at the option of GSM. Stated delivery dates are approximate only. GSM shall have no liability for damages arising out of the failure to keep a projected delivery date, irrespective of the length of the delay, and Customer shall not be entitled to cancel any order on the basis of such delay.
- 2.2** Risk of loss and damage to the Products shall pass to Customer upon delivery in accordance with the delivery term Ex-works, Incoterms 2000.
- 2.3** GSM accepts no responsibility for any damage, shortage or loss in transit. GSM will attempt to pack or prepare all deliveries to protect against damage or deterioration in shipment but GSM does not guarantee against such damage. Such damage claims shall be made by Customer on carrier.
- 2.4** In the event Customer is unable to accept delivery of goods when tendered, GSM may, at its option, arrange storage of the Products and Customer shall be liable to GSM for the reasonable cost of such storage.
- 2.5** Products shall remain the property of GSM until GSM has received full payment in accordance with the Purchase Order, and title and ownership of the Products shall pass to Customer upon receipt by GSM of such payment.
- 2.6** These provisions of Article 2 are without prejudice to any other rights which GSM may have with respect to Customer's failure to take delivery of Products which includes the right to invoice Customer for the Products.

### **3. CANCELLATION**

- 3.1** Orders placed by Customer and accepted by GSM may be cancelled only with the consent of GSM and may subject Customer to cancellation charges.

### **4. DELAYS**

- 4.1** If GSM at any time has reason to believe that the performance of its obligations will be delayed, GSM shall promptly notify Customer of the estimated period of delay.
- 4.2** Circumstances outside of GSM's control, including but not limited to circumstances which are attributable to Customer

such as delay in payment or delay of any of Customer's undertakings causing GSM a delay, shall entitle GSM to postpone any of its undertakings until such delay is cured by Customer.

- 4.3** GSM shall be reimbursed for costs for any delays attributable to Customer.
- 4.4** GSM will not be liable for any delays in delivery or for damages suffered by Customer by reason of such delays.

### **5. RETURNS**

- 5.1** Returns shall not be made without authorization from GSM. Authorized return shipments will be directed by GSM, including any shipping instructions and handling charges. Transportation fees must be prepaid by Customer to the point of origin of GSM's shipment unless otherwise agreed. Customer's violation of this Article shall permit GSM's refusal and immediate return of Products to Customer.

### **6. WARRANTIES; GUARANTEE**

- 6.1** GSM warrants to repair, correct, or replace Products or parts thereof, if they fail to conform to, function, or operate according to the Specifications by reason of defective material, design or workmanship under this Article 6.
- 6.2** GSM guarantees that for a period of twelve (12) months as from the moment the goods are ready for delivery ex-works (Incoterms 2000), Products and parts of the Products shall be free from defective material, design or workmanship under normal use and service not due to wear and tear or weather conditions, provided they are maintained in accordance with GSM's instructions or through customary usage. Upon conclusion of the guarantee period, any and all obligations and liabilities of GSM regarding defects shall end. At GSM's option, GSM will either repair or replace any defective Products or parts found defective within the guarantee period for which GSM assumes responsibility. Replacement parts will be delivered DDU (Incoterms 2000). GSM may require allegedly defective parts to be returned, freight pre-paid, to establish the guarantee.
- 6.3** This guarantee, shall apply only if:
  - a) the Products are not modified or changed without the written approval of GSM;
  - b) Customer has given GSM notice in writing within 14 days of such defects, non-conformities or deviations of its discovery by Customer;
  - c) such defect, non-conformity or deviation was not caused by interworking or interoperable equipment or other products not supplied under the Contract;
  - d) such defect, non-conformity or deviation was not caused by abuse, misapplication or external Influences; and
  - e) GSM is given every opportunity to inspect and remedy such defect, non-conformity or deviation.
- 6.4** All transportation costs and risk of loss incurred with respect to the repair and/or replacement of defective goods shall be borne by Customer when returned to GSM, and by GSM when returned to Customer, transportation being by normally scheduled carrier, unless otherwise agreed.
- 6.5** The warranties given above constitute the only warranties made by GSM and are in lieu of any and all other warranties or conditions, whether express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose as determined by law or otherwise.

### **7. INDEMNIFICATIONS**

- 7.1** GSM and Customer agree to indemnify and hold each other harmless from and against any damages, loss, or injury (including death) to personnel, property, equipment, materials and any other items within either party's possession or control and that of its other subcontractors whether owned, hired, leased, chartered, etc., resulting from the intentional or negligent acts or omissions of either party's respective officers, employees, agents or subcontractors in connection with the performance of the Purchase Order.
- 7.2** Third Party Liability. Each party shall assume its legal liability towards third parties for any of its own acts or

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omissions and shall indemnify, defend and hold harmless the other party accordingly. Under this provision the term "third party" excludes the client(s) of the Customer. Notwithstanding any other indemnities and liabilities referred to in the contract or General Sales Terms and Conditions, Customer shall indemnify, defend and hold harmless GSM with respect to claims made by Customer's client(s).

- 7.3** Consequential Loss. Notwithstanding any of the indemnities and liabilities or warranties specifically referred to elsewhere, GSM shall under no circumstance be liable for any indirect, incidental, special or consequential damage including but not limited to, loss of use or downtime, loss of profit or revenue, loss of business, loss of data or production, or any other economic loss arising, or alleged to arise from GSM's failure to properly carry out its obligations, whether or not the possibility of such damages was reasonably foreseeable and Customer hereby agrees to indemnify, defend and hold harmless GSM against any such losses regardless whether

### **8. TECHNICAL ASSISTANCE**

- 8.1** Upon request, GSM may provide engineering or technical information regarding its Products. Any such information, service or advice so provided, whether with or without additional charge, shall be advisory only. It is expressly agreed that GSM shall have no liability for any damage or loss arising out or resulting from, or caused in whole or in part by such information, advice, or assistance provided.

### **9. REGULATORY COMPLIANCE**

- 9.1** Customer is informed that sale and delivery of exported Products may be subject to export regulations, e.g. of the Netherlands, the European Union and/or the United States of America. Customer shall hold GSM harmless of any and all claims which relate to infringement or violation of any kind by Customer of such regulations.
- 9.2** By acceptance of delivery of this order, Customer warrants it has complied with all applicable governmental, statutory and regulatory requirements and will furnish GSM with such documents as may be required.
- 9.3** GSMS provides this quote and any subsequent sale subject to the express condition that no equipment will be, with any knowledge, have a destination or onward destination to an embargoed country by the United States of America for the import or export of telecoms equipment. GSMS reserves the right to require an authenticated end user certificate if any shipment is suspected to be intended for an embargoed country. Further details can be provided on request.

### **10. MODIFICATION OF CONTRACT**

- 10.1** No addition or modification of the Purchase Order shall be effective or binding on GSM unless agreed in writing and executed by a duly authorized representative of GSM.

### **11. FORCE MAJEURE**

- 11.1** GSM shall be excused from the performance of any of its obligations under the Purchase Order and such obligations shall be extended for a reasonable period under the circumstances if the performance thereof is prevented or delayed by industrial disputes or any cause beyond GSM's reasonable control which, without in any way limiting the generality of the foregoing, shall include acts of God, riots, wars, accidents, embargos or requisition (acts of government), including non-availability of an export license for the Products or any part thereof or visa and permits for GSM's personnel, or delays in the performance of its subcontractors caused by any such circumstances as referred to in this Article 11.
- 11.2** Should a cause of force majeure continue for more than three (3) months, GSM shall have the right to terminate the Purchase Order.

### **12. ASSIGNMENT**

- 12.1** Neither party shall have the right to assign the Purchase Order or any right herein without the prior written consent of

the other party except in cases where GSM assigns the Purchase Order to other GSM affiliates or subsidiaries.

### **13. DISPUTES and GOVERNING LAW**

- 13.1** The Purchase Order and/or any dispute and/or claim arising out of or in relation to it and any further agreements resulting there from, shall be governed, interpreted and construed in accordance with the laws of the State of New York, and under the exclusive jurisdiction of the Southern district court of New York, United States of America.
- 13.2** Customer agrees to submit to the jurisdiction of any such court; agrees to venue in such court; waives any defense of forum nonconveniens; agrees to notice and service of process by mail at its address specified in the Purchase Order; and agrees to enforcement of any award or judgment in any jurisdiction in which Customer has its business or assets.
- 13.3** The invalidity or unenforceability of any particular provision of this contract shall not affect any other provision therein. The particular invalid or unenforceable provision may be replaced by the court with a provision that most closely mirrors that invalid or unenforceable provision.