



## TERMS AND CONDITIONS OF SALE

The following Terms and Conditions shall govern the sale of any product or service (collectively referred to herein as the "Products" or a "Product") sold by SMARTEC SA ("SMARTEC") directly or indirectly through its authorized agents, distributors or resellers, to the purchaser stipulated on a SMARTEC invoice or price quotation ("Purchaser"), unless otherwise expressly agreed to in writing by SMARTEC. SMARTEC shall not be bound by the terms of any order forms or other communications between the parties which are inconsistent with or additive to these Terms and Conditions.

### 1. ORDERING AND SHIPPING

- (a) **Placement of Orders.** Orders for Products shall be placed in writing by mail, fax or PDF format e-mail to SMARTEC. Each order shall specify: (i) the quantity, model, and price of each Product ordered; (ii) the date requested for, and the address of the place of, delivery; (iii) the name, address, telephone/fax number and e-mail address of any carrier or freight forwarder specifically requested by Purchaser; (iv) the name, address telephone/fax number and e-mail address of Purchaser; as well as (v) the name, address telephone/fax number and e-mail address of the end-user, if different from the Purchaser.
- (b) **Confirmation of Orders.** Upon receipt of an order, SMARTEC shall respond in writing by stating: (i) any proposed changes in the Products or quantities of the Products; and (ii) the date on or before which SMARTEC expects to be able to make delivery to the carrier or freight forwarder. An order shall be binding on SMARTEC only upon the issuance by SMARTEC of written confirmation of such order.
- (c) **Cancellation of Orders.** Cancellation of any order between seven (7) and thirty (30) days prior to confirmed ship date shall be subject to a cancellation charge as liquidated damages of forty percent (40%) of the cancelled portion of the order. Orders may not be cancelled within seven (7) days prior to, on, or after the confirmed ship date. Orders of non-standard Products or Product configurations may not be cancelled. The cancellation charge is not imposed as a penalty, but as liquidated damages.
- (d) **Changes in Delivery Schedule.** Change in delivery date by Purchaser, without charge, must be made in writing and received at least fifteen (15) days prior to scheduled delivery date. Any requested delay or series of delays totaling ninety (90) days or more shall be treated as a cancellation and shall be subject to the 40% cancellation charge on the portion of the order which is so delayed.
- (e) **Shipping and Delivery.** Delivery is EX WORKS SMARTEC's Manno, Switzerland facility (the "Delivery Point"). All risk of loss or damage with respect to the Products shall pass to Purchaser upon delivery at the Delivery Point to the carrier or freight forwarder. All freight, insurance and other shipping charges and expenses from the Delivery Point, as well as any special packing expenses requested by Purchaser, shall be borne by Purchaser. SMARTEC shall use good faith efforts to comply with Purchaser's instructions regarding shipping and choice of carrier. Purchaser must notify SMARTEC within ten (10) days of receipt of Products of any discrepancies in the shipment of such Products or of any reason for rejection of such Products, failing which Purchaser shall be deemed to have accepted the Products.

### 2. PRICING

- (a) **Quotations and Prices.** Prices quoted by SMARTEC are firm for thirty (30) days from quotation date, and are quoted and invoiced in either: CHF, EURO, or US currencies, as specified by SMARTEC.

- (b) **Taxes and Other Charges.** Prices do not include sales, use or privilege taxes, value-added taxes, excise or similar taxes, custom duties, shipping, handling, insurance, brokerage, and other related charges levied by any jurisdiction pertaining to the Products, other than taxes computed on the basis of the net income of SMARTEC, which shall be paid by Purchaser. Orders exempt from sales or other taxes must be so marked and Purchaser must supply satisfactory proof of such tax exemption.

- (c) **Payment.** All Products sold by SMARTEC shall be invoiced upon shipment. Payment must be made to SMARTEC at its principal place of business or pursuant to SMARTEC's written instructions. Until initial credit terms have been established with Purchaser, orders shall require an advance deposit with the balance due prior to shipment, or irrevocable letters of credit or other payment security acceptable to SMARTEC.

All wire payments, wire transfer of moneys and letters of credit – **in CHF (Swiss Francs)** - must be made payable at sight or sent to:

SMARTEC SA  
C/O UBS SA  
6900 Lugano, Switzerland  
Int'l Swift UBSWCHZH80A  
IBAN Code CH95 0024 7247 5257 4901 L  
Account 0247 00525749.01L

All wire payments, wire transfer of moneys and letters of credit – **in Euro** - must be made payable or sent to:

SMARTEC SA  
C/O UBS SA  
6900 Lugano, Switzerland  
Int'l Swift UBSWCHZH80A  
IBAN Code CH26 0024 7247 5257 4961 G  
Account 0247 00525749.61G

All wire payments, wire transfer of moneys and letters of credit – **in US Dollar** - must be made payable or sent to:

SMARTEC SA  
C/O UBS SA  
6900 Lugano, Switzerland  
Int'l Swift UBSWCHZH80A  
IBAN Code CH80 0024 7247 5257 4960 H  
Account 0247 00525749.60H.

- (d) **Late Charge.** Except as otherwise set forth above, all payments due hereunder must be paid within thirty (30) days of the date of SMARTEC's invoice. Invoices unpaid in full when due shall bear a late payment interest charge of the lower of 18% per year (one and one half percent (1½ %) per month) or the maximum percentage allowed by law for each month or portion thereof of the amount past due. In addition, SMARTEC may cancel or delay shipment of the Products at its sole discretion.

- (e) **Retained Rights.** Until payment of an invoice has been received in full by SMARTEC, SMARTEC shall retain ownership of the Products and shall retain, and Purchaser hereby grants to SMARTEC, a first priority security interest in the Products shipped or delivered to Purchaser. Purchaser shall promptly



execute any documents necessary to perfect and protect such security interest on SMARTEC's behalf.

### 3. WARRANTY

(a) **General Warranty.** SMARTEC generally warrants that its Products shall be free from material defects in material and workmanship under conditions of normal use for a period of one (1) year from the date of invoice. Purchaser may specifically purchase an extended Product warranty from SMARTEC. Except for the duration of such extended warranty, the other provisions of this section and of this Agreement shall apply to any extended warranty purchased by Purchaser from SMARTEC. THIS WARRANTY IS IN LIEU OF, AND PURCHASER WAIVES, ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES FOR MERCHANTABILITY AND FITNESS FOR PURPOSE. IF ANY PRODUCT DOES NOT CONFORM TO THE FOREGOING WARRANTY, IT MAY BE RETURNED TO SMARTEC AND SMARTEC SHALL, AT ITS OPTION, REPAIR OR REPLACE THE PRODUCT AT NO CHARGE, OR PROVIDED THE PRODUCT CANNOT BE REPAIRED OR REPLACED WITHIN A REASONABLE TIME, REFUND THE PURCHASE PRICE. ALL REPLACED PARTS SHALL BECOME THE PROPERTY OF SMARTEC. THE REMEDIES STATED IN THIS WARRANTY ARE THE SOLE REMEDIES AVAILABLE TO PURCHASER AND ARE IN LIEU OF ANY DIFFERENT OR ADDITIONAL REMEDY PROVIDED FOR BY THE APPLICABLE LAW. THIS WARRANTY DOES NOT INCLUDE AND SMARTEC SHALL NOT BE RESPONSIBLE FOR DAMAGE TO THE PART OR PRODUCTS RESULTING FROM IMPROPER INSTALLATION, ABUSE, NEGLIGENCE, ACCIDENT, IMPROPER USE, OR SERVICING OR MODIFICATION OF THE PART OR PRODUCT BY ANYONE OTHER THAN SMARTEC OR AN ORGANIZATION CERTIFIED BY SMARTEC.

(b) **Warranty Service.** Warranty service may be obtained by: i) providing the SMARTEC Customer Service Department with written notification of a defect prior to the expiration of the warranty period; ii) obtaining a Return Material Authorization ("RMA") number; iii) returning the defective Product to SMARTEC's Manno, Switzerland facility within thirty (30) days of issuance of an RMA number; and, iv) providing proof of purchase date and written description of the problem or failure. Purchaser shall pay all shipping charges and assume the risk of loss or damage in transit. Upon return of such repaired Product, the warranty with respect to such Product shall continue for the remaining unexpired warranty term. Services not covered by this warranty shall be provided at the then prevailing SMARTEC service rates.

### 4. LIMITATIONS OF LIABILITY

PRODUCTS SOLD BY SMARTEC, OR ITS AUTHORIZED DISTRIBUTORS, AGENTS OR RESELLERS, HAVE NOT BEEN AND ARE NOT REPRESENTED AS BEING, APPROVED OR CERTIFIED BY ANY REGULATORY BODY. PRODUCTS PURCHASED SHALL BE INSTALLED AND USED AT PURCHASER'S OR USER'S OWN RISK. SMARTEC DISCLAIMS ALL LIABILITY WITH RESPECT TO ANY AND ALL USE OF ITS PRODUCTS WITHOUT LIMITATION. IN NO EVENT SHALL SMARTEC, ITS SHAREHOLDERS, DIRECTORS, EMPLOYEES, AGENTS, AFFILIATES OR RELATED CORPORATIONS OR ENTITIES, BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR RELATED TO THE PURCHASE, TRANSPORTATION, INSTALLATION OR USE OF SMARTEC PRODUCTS (INCLUDING LOSS OF PROFITS, USE, OR OTHER ECONOMIC ADVANTAGE), HOWEVER ARISING, WHETHER FOR BREACH OF WARRANTY OR IN TORT, EVEN IF SMARTEC HAS BEEN

PREVIOUSLY ADVISED OF THE INTENDED USE OF ITS PRODUCTS OR OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL SMARTEC'S LIABILITY EXCEED THE TOTAL FEES PAID BY CUSTOMER WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO THE LIABILITY. THIS LIMITATION OF LIABILITY SHALL NOT APPLY IN THE EVENT OF SMARTEC'S WILFUL INTENT OR NEGLIGENCE PROVIDED HOWEVER THAT SMARTEC'S LIABILITY FOR AUXILIARY PERSONS IS ENTIRELY EXCLUDED TO THE MAXIMUM EXTENT ALLOWED UNDER ARTICLE 101 (2) OF THE SWISS CODE OF OBLIGATIONS.

### 5. INTELLECTUAL PROPERTY RIGHTS

Nothing in these Terms and Conditions shall be construed as conferring upon Purchaser any right whatsoever in and to SMARTEC's intellectual property, patents, trademarks, trade names, designs, know how or trade secrets, title to which shall remain with SMARTEC. Purchaser shall not reverse engineer the Products or any part thereof.

### 6. EXPORT CONTROLS

Purchaser shall comply with all applicable regulations and laws in effect now and hereinafter, including compliance with all export controls on the distribution or dissemination of Products, technology, and information related to and/or exchanged under this Agreement.

### 7. NOTICES

All notices to SMARTEC shall be deemed given when sent by fax with subsequent confirmation, or mailed by certified mail, return receipt, postage prepaid, or courier service or equivalent to: SMARTEC SA, Customer Service, Via Pobietto 11, CH-6928 Manno; Fax +41 91 610 18 10.

### 8. GENERAL PROVISIONS

SMARTEC shall not be responsible for delays or failures in performance resulting from acts beyond its reasonable control. Purchaser shall indemnify, defend and hold harmless SMARTEC and its related subsidiaries and affiliates and their respective employees, officers and directors, from and against all liabilities, costs, expenses (including reasonable attorneys' fees), damages and losses including any direct, indirect or consequential losses or loss of profits suffered or incurred by any of them arising out of or in connection with any claim made against SMARTEC arising out of Purchaser's use or resale of any Products. If any part or provision of these Terms and Conditions shall be found to be illegal or unenforceable therein, these Terms and Conditions shall remain in full force and effect and such part or provision shall be deemed stricken. SMARTEC shall be entitled, in addition to its other rights hereunder, to recover reasonable fees of attorneys, accountants and other professionals including costs and fees on appeal. These Terms and Conditions represent the entire agreement between SMARTEC and Purchaser relating to the purchase and sale of Products and supersede all prior representations including any quotation, memorandum of understanding, discussions, negotiations and agreements, whether written or verbal. No amendment to these Terms and Conditions shall be effective unless it is in writing, dated and signed by a SMARTEC authorized representative. No waiver shall be implied from SMARTEC's conduct or failure to enforce its rights hereunder. No waiver shall be effective unless in writing signed on behalf of the party against whom the waiver is asserted. Purchaser may not assign any of its obligations, rights or remedies under these Terms and Conditions without the prior written consent of SMARTEC, and any attempt at such assignments shall be null and void. Nothing contained herein shall be deemed to create any association, partnership, joint venture or relationship of principal, agent, master or servant between Purchaser and SMARTEC, or to provide SMARTEC or Purchaser with the right, power or authority to incur any obligation or make any representations, warranties or guarantees on behalf of the other party. These Terms and Conditions shall be governed by and construed in accordance with the laws of Switzerland, applied without giving effect to any conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) shall not apply. All disputes relating to, or arising out of, these Terms and Conditions and the related agreement shall be subject to the exclusive jurisdiction and venue of the courts of Lugano, Switzerland.