



SWAP Instruments B.V.
General Conditions of Sale and
Delivery – Business (B2B)

1. Interpretation

“Buyer” the person who accepts a quotation of the Seller for the sale of the Goods and/or Services or whose order for the Goods and/or Services is accepted by the Seller.

“Conditions” the standard terms and conditions of sale set out in this document and includes any special terms and conditions as agreed in Writing between the Seller and Buyer.

“Contract” the contract for sale and purchase of the Goods and Services.

“Goods” the goods which is Seller is to supply in accordance with these Conditions.

“Incoterms” the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made.

“Seller” SWAP instruments B.V.

“Services” any services which the Seller supplies in accordance with these Conditions.

“Software” any software that is supplied as part of the Goods.

“Writing” a written letter, including facsimile, e-mail, and comparable means of communication.

2. Basis of the Sale

2.1 The Buyer shall purchase the Goods and/or Services in accordance with any quotation of the Seller in Writing which is accepted by the Buyer (explicit or implicit), or any order of the Buyer which is accepted by the Seller in Writing, subject to these Conditions.

2.2 No variation of these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 Any terms and conditions issued by Buyer are hereby explicitly rejected and disregarded.

3. Quotations and specifications

3.1 All quotations are without obligation unless specifically stated to the contrary in Writing. The Seller is not liable for errors or deviations from samples, drawings, indicated measurements, weights, models, colors and/or other data provided by the Seller to the Buyer.

3.2 Obvious errors and misprints in quotations, order confirmations and invoices can be rectified by the Seller at any time and are not binding.

3.3 The equipment offered by The Seller is designed for use in a moderate climate. Accuracy is guaranteed for temperatures in the range 0°C to 35°C, unless specified otherwise in the product specification.

4. Orders and specifications

4.1 When placing orders, the Buyer must provide all relevant information with regard to invoice instructions, delivery address, import licenses (where applicable), transport markings as well as instructions for the route to be followed and the preferred transportation method.

4.2 Orders shall only become binding upon The Seller after they have been accepted or confirmed in Writing by the Seller. If no previous written acceptance or confirmation of an order has been made, the agreement comes into force as a result of the Seller complying fully or partially with a request for delivery by the Buyer, or on the basis the Seller having sent the Buyer an invoice.

4.3 If any alterations to the Goods are made at the request of the Buyer then the Buyer shall indemnify the Seller against any loss or damage of any kind suffered by the Seller as a result of those alterations including loss or damage resulting from any infringement of patent, copyright or other property right.

5. Changes and cancellations

Changes to and cancellations of any agreement are possible only with the written permission of the Seller. If the Buyer wishes to change or cancel an agreement or if an agreement is changed or cancelled at the request of the Seller due to reasons attributable to the Buyer, the Buyer is responsible for reimbursing the

Seller for all damages, including loss of profits, and all costs arising from such changes or cancellations, subject to a minimum charge of 10% of the total costs specified in the contract, quotation or agreement.

6. Prices

6.1 Quotations for a fixed price shall bind the Seller only if given in Writing and remain open for the period stated in such quotation or in the absence of a stated period for 30 days from the date of the quotation.

6.2 Where no price has been quoted or a quoted price is no longer valid, the price shall be that shown in the Seller's current relevant price list at the time of the Buyer's order.

6.3 The Seller reserves the right to increase the price by giving notice in Writing to the Buyer at any time before delivery to take into account increased costs to the Seller of fulfilling the relevant order.

6.4 All prices are exclusive of Value Added Tax ("VAT") or other applicable sales taxes or duties, which the Buyer shall be additionally liable to pay to the Seller. VAT will be charged at the current VAT rate in The Netherlands (at the time of supplying the order) for Goods and / or Services delivered to Buyers within The Netherlands.

6.5 Where Goods and / or Services are delivered to Buyers in another European Union country, VAT will be charged at the current VAT rate in The Netherlands (at the time of supplying the Goods and/ or Services), except where the Buyer supplies its European Union VAT number, in which case no VAT will be charged.

7. Delivery and delivery time

7.1 Delivery of the agreed Goods in The Netherlands takes place "ex works (EXW)" (Incoterms) without packaging, unless expressly agreed in Writing to the contrary and/or expressly stated to the contrary in the price lists. The cost of packaging is charged to the Buyer separately. The Seller retains the right to make a charge for administration costs for the supply of items below an invoice value determined by the Seller. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provision of Incoterms shall have the same meaning in

these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

7.2 The delivery times indicated are only an approximation. Any exceeding of such delivery times shall not give the Buyer the right to cancel the order or to refuse delivery or payment for the Goods, nor shall it oblige the Seller to pay any reimbursement to the Buyer.

7.3 Where Goods have not been accepted by the Buyer after the expiry of the delivery period, the Goods shall be held at the disposal of the Buyer and shall be stored at the Buyer's own expense and risk. In that case, in addition to the (storage) costs incurred, the Seller will charge a monthly rate of interest of 1% of the invoice value up to the moment of final payment.

7.4 If the Seller fails to deliver the Goods and/or Services for any reason which is within the reasonable control of the Seller, the Seller's liability shall be limited to the excess difference (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those Goods and/or Services not delivered.

8. Transportation, risk and insurance

8.1 The Seller determines the mode of transport. If the Buyer later selects a transport company or method himself, any additional costs will be passed on. If delivery cannot be made due to causes outside the control or the range of action available to the Seller, the Seller shall have the right to store, or to arrange for the Goods ready for delivery to be stored, at the expense and risk of the Buyer and to require payment for the Goods as if they had been delivered.

9. Claims

9.1 Claims regarding deliveries have no effect on other agreements or the legal relations between the parties. These claims must be made by the Buyer in Writing to the Seller directly and such claims must be in the possession of the Seller within fourteen days from the receipt of the Goods or, when the Buyer was only able to discover the defects at a later time, within fourteen days of the discovery of such defects. These claims must be made by means of a precise written statement of the nature and the ground of the complaint, must be accompanied by the packing slip and must

quote the invoice number. Claims not made within the aforementioned period of fourteen days at the latest will not be entertained. External transport damage must be reported on the freight note and the Buyer must demonstrate this damage by means of photographs.

9.2 The processing or use of the delivered Goods by the Buyer or the placing of such Goods by the Buyer under the authority of any third party shall nullify the right of claim. Minor deviations in quality or quantity and deviations that are regarded as tolerable within the sector shall confer no right of claim. If a claim is substantiated, the Seller has the right, in exchange for the return of the faulty Goods, to credit the Buyer in full, to repair the faulty Goods, or to proceed to re-delivery or reprocessing of the Goods in question.

9.3 The Buyer does not have the right to return Goods delivered to him under any circumstances unless the Seller has given its written approval. If the Buyer should nonetheless return Goods in conflict with this stipulation, insofar as such Goods are not refused by the Seller, the Goods shall be held at the disposal of the Buyer at the Buyer's expense and risk, without acknowledgement of the appropriateness of any later claim against the guarantee being capable of being construed from such course of action.

10. Warranties and liability

10.1 The Seller provides a guarantee in respect of new Goods supplied by the Seller for a period of 24 months following delivery unless expressly agreed to the contrary in Writing. All items or components of such items in which defects might arise during this period as a result of faulty construction defects or faulty material defects will be repaired or alternatively replaced by the Seller (at the discretion of the Seller) free of charge, subject to the condition that such defects are brought to the attention of the Seller in Writing immediately following discovery of the same, and in all cases within the periods referred to in article 9. Wear and tear, abnormal working conditions and damage caused by inappropriate use of the products and failure to (correctly) comply with the instructions for use is not covered.

10.2 Products shall only be sent back to the Seller for repair or replacement - at the Buyer's own expense - after the Seller has given its written approval. Only in the case of repair or replacement under guarantee shall the products be returned to the Buyer at the expense of the Seller.

10.3 If the guarantee relates to a product manufactured by a third party, the guarantee is limited to the guarantee provided by the manufacturer concerned.

10.4 If the Buyer carries out repairs or alterations during the guarantee period or has such work being carried out on his behalf without the permission of the Seller, or fails to comply with his payment obligations, all guarantee obligations shall immediately lapse. The Buyer is not entitled to refuse payment on the ground that the Seller has not, not fully or not timely complied with its guarantee obligations.

10.5 Without prejudice to the foregoing, unless there is an instance of deliberate act or omission or deliberate recklessness, the Seller shall under no circumstances be liable for any indirect damages, such as damages resulting from any stoppage of business operations, delay, disruption or any other form of operational damages under whatever heading or of whatever description, for any direct or indirect damages caused to or by products delivered by the Seller, or for damage or injury caused to property, environment, persons and all other living organisms.

10.6 In addition to 10.5, the Seller shall not be liable to the Buyer, whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation or otherwise for,

10.6.1 loss of profits;

10.6.2 loss of business;

10.6.3 depletion of goodwill or similar losses;

10.6.4 loss of goods;

10.6.6 loss of contracts;

10.6.7 loss of use;

10.6.8 loss of corrupted data or information;

10.6.9 any special, indirect or consequential loss or damage.

10.7 All liability on the part of the Seller under any heading whatever shall in all cases be limited to the maximum amount of the cover provided by the Seller's liability insurance. If the liability insurance provides no cover or insufficient cover, or if no insurance is closed, the liability of the Seller shall in all cases be limited to a maximum of the amount of the purchase price of the delivered Goods and / or Services already paid by the Buyer at the time of his claim. The Buyer indemnifies the Seller against all liability towards third parties as a result of any defect / mistakes in the delivered Goods and /or Services rendered.

11. Intellectual Property and Software

11.1 The Buyer acknowledges that the Seller or its licensors own all intellectual property rights in the Goods and / or Services and no rights are granted to the Buyer in respect thereof except as expressly set out in these Conditions.

11.2 The Seller accepts no liability in relation to any loss, costs or expenses caused over data changes and (without limitation) which arise through use of its software systems with other software, systems or data.

11.3 Software development is a complex activity and the Seller does not warrant that any software it supplies will be free from all defects.

12. Retention of title

12.1 Without prejudice to the stipulations of these Conditions, all Goods delivered by the Seller at any time remain the property of the Seller until the moment of payment of all our claims against the Buyer that fall within the framework of article 3:92 BW (Dutch Civil Code), that arise from any cause whatever and without regard to the exigibility of such claims, including interest charges and costs.

12.2 The Buyer is not authorized to pledge or transfer the ownership of the Goods to third parties until full payment for the Goods has been made. In case of any infringement of this condition, as in the case of the full or partial applicability of article 14, the Seller has the right to repossess all Goods delivered by the Seller or to have such Goods repossessed on its behalf from the location in which such Goods are to be

found, without any authorization from the Buyer or intervention by a court of law being necessary for this purpose. All other claims of the Seller against the Buyer shall then become immediately due and payable at that time.

12.3 In the event that a third party intends to serve a garnishment order against the Goods delivered subject to retention of title or intends to establish or execute rights with respect to such Goods, the Buyer has the obligation to notify the Seller as quickly as possible. The Buyer has the obligation to insure the Goods delivered subject to retention of title, to keep these Goods insured against theft, fire, explosion and water damage and to submit this insurance policy and the insurance payment receipts to the Seller for inspection at the first request of the Seller.

12.4 The Buyer is not entitled to pledge the Goods delivered subject to retention of title nor to extend any other right pertaining to such Goods to any third party.

13. Payment

13.1 Unless agreed to the contrary in Writing, all invoices must be paid within 30 days of the date of the invoice without appeal to any discount, deduction or setoff.

13.2 Unless agreed on the contrary in Writing, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after shipping to the Buyer.

13.3 Unless agreed on the contrary in Writing, the Seller shall be entitled to invoice the Buyer for the price of the Service on or at any time after delivery of the Service.

13.4 Should the Buyer fail to make payment within the agreed payment period, he shall be in default by virtue of the simple expiry of that payment period and without necessity for any further placement in default or warning, whereupon the Seller may exercise any of the following rights, either alone or in any combination:

13.4.1 terminate the Contract;

13.4.2 suspend any further deliveries to the Buyer;

13.4.3 suspend all part of the Services;

13.4.4 recover any Goods already delivered;

13.4.5 retain all payments already made;

13.4.6 charge the Buyer interest (both before and after any judgement) of 8% as provided for in article 6:119a BW (Dutch Civil Code), with interest chargeable over part of a month being calculated as for a full month.

13.5 The Seller is also entitled, in addition to the principal claim and the interest, to claim the full extrajudicial and court costs incurred as a result of non-payment or non-timely payment. The full extrajudicial costs shall in any case be due and payable by the Buyer where the Seller has secured the services of a third party for the collection of the amounts due.

13.6 If a serious doubt exists on the part of the Seller with regard to Buyer's solvency, the Seller shall then have the right to suspend compliance with its obligations - where a start has already been made with the implementation of these obligations - until the Buyer has provided security for compliance with all his obligations arising under the agreement concerned or other agreements, whether (partly) completed or otherwise, to the satisfaction of the Seller.

14. Default of the Buyer/dissolution of the agreement

In the event that the Buyer fails to comply with any obligation under any agreement with the Seller whatever, if he becomes subject to or is threatened with becoming subject to suspension of payments, is declared to be in a state of bankruptcy, if his bankruptcy is applied for, if he decides to liquidate his business or if the Seller receives information that a high degree of probability exists that the Buyer will be unable to comply with his payment obligations, the Seller shall be entitled to suspend all agreements in existence at that time without necessity for intervention by a court of law, or to dissolve or declare all such agreements to be fully or partly dissolved by means of a registered letter to this effect addressed to the Buyer, to regard all non exigible claims as immediately exigible and to repossess all Goods delivered but not yet paid for, without prejudice to the further right of the Seller to claim compensation for damages, lost profits and interest.

15. Force majeure

15.1 If the Seller is unable to deliver Goods and / or Services on time due to force majeure, it has the right to suspend delivery or to cancel delivery altogether, depending on the circumstances. Notwithstanding the provision of article 6:75 BW (Dutch Civil Code) force majeure shall apply to all circumstances outside of the control or the field of action of the Seller that are of a nature such that compliance with the agreement cannot reasonably be expected of the Seller, the details of these arrangements being subject to the proviso that the Seller is prepared in such cases to consult with the Buyer regarding measures that might be taken with the intention of preventing damages for both the Seller and the Buyer or at least with a view to limiting such damages as far as possible. The Buyer is not entitled to any reimbursement for damages in the event that an instance of force majeure occurs.

15.2 If the performance of the Seller's obligations is delayed or hindered due to force majeure, the following provisions will apply:

15.2.1 the Seller shall as soon as practical give the Buyer notice of the reasons for the delay or hindrance. However, failure to give such notice will not prevent the Seller relying on the remaining provisions of this clause and the Seller will incur no liability or failure to give such notice.

15.2.2 The Seller's duty to perform shall be suspended for as long as the circumstances continue, and the type or performance of the Seller's obligations shall be extended by for a time equal to the duration of these circumstances.

16. Export Terms

16.1 Where the Goods are supplied for export from The Netherlands the provisions of this clause 16 shall apply notwithstanding any other provision of these Conditions.

16.2 The Buyer shall be responsible for complying with any legislation or regulations governing the import of the Goods into the country of destination and for the payment of any duties thereon.

16.3 Unless otherwise specified by the Seller, the Goods shall be delivered by the Seller on a CPT

basis (Incoterms) inclusive of delivery to destination airport carriage but excluding insurance, customs clearance, local taxes and duty, on-carriage and any other costs applicable in the country of destination. The risk of damage or loss to the goods as well as any additional costs due to events occurring after the time the goods have been delivered to the first carrier, is transferred from the Seller to the Buyer as soon as the goods have been delivered to the first carrier. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provision of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

16.4 No claim for damage in transit, shortage of delivery or loss of the Goods will be entertained unless the Buyer shall have given to the Seller written notice of such damage, shortage or loss with reasonable particulars thereof within fourteen days of receipt of the Goods or in the case of total loss within seven days of receipt of the invoice or other notification of despatch. The Seller's liability, if any, shall be limited to replacing or repairing such Goods or refunding the price and it shall be a condition precedent to any such liability that the Purchaser shall if so requested have returned to any such liability that the Purchaser shall if so requested have returned the damaged Goods to the Seller within fourteen days of request. Article 16.4 is applicable only if the Seller has taken out insurance and this has been agreed in Writing between the parties.

17. Disputes

All disputes that might arise from or in connection with agreements concluded under these Conditions and further agreements that arise from such agreements, unless the Cantonal Court is competent to take cognizance of these disputes, shall be submitted exclusively to the competent court of the District Midden-Nederland location Utrecht, such to include proceedings for obtaining preliminary injunctions. The Seller is nevertheless entitled in all cases to apply to the competent court in the Buyer's place of residence or to a competent court elsewhere.

18. Applicable legal jurisdiction

All agreements concluded subject to these Conditions and all further agreements that arise from such agreements are governed by Dutch law and specifically exclude applicability of the UN Convention on contracts for the international sale of Goods (Vienna 1980).

19. Privacy and processing of Personal Data

The Seller processes personal data in accordance with its policy as described in its privacy statement.