

Hereinafter referred to as "SmarDTV Global Ts & Cs" or "GSC"

**0. DEFINITIONS**

0.1 For purposes of these SmarDTV Global Ts & Cs, the word "**Buyer**" shall mean the party which agrees to purchase the Products/Services as specified in SmarDTV Global's Order Acknowledgment; the word "**Force Majeure**" shall mean any act of government, natural catastrophe, destruction by insurrection war or hostilities, riots, public disturbances, strikes or any other event beyond the will of the Parties which delays, hinders, restricts or makes the execution of these CSC impossible; the word "**Order Acknowledgment**" shall mean the order acknowledgment sent by SmarDTV Global to Buyer after reception of the Purchase Order; the words "**Party**" and "**Parties**" shall mean SmarDTV Global and Buyer individually or collectively; the word "**Product(s)**" shall mean all or part of an order for products, any appurtenance thereto including packaging, described in the Order Acknowledgement or indispensable for its execution; the word "**Purchase Order**" or "**PO**" shall mean the purchase order sent by Buyer to SmarDTV Global describing the Products or Services purchased by Buyer from SmarDTV Global under these GSC; the word "**Services**" shall mean the services (if any) described in the Order Acknowledgment or which are indispensable for its execution.

**1. SCOPE OF APPLICATION**

1.1. SmarDTV Global Ts & Cs shall apply to Products and Services manufactured and/or provided by SmarDTV Global to Buyer. Any proposal or form of proposal made by SmarDTV Global to Buyer for its Products shall be governed by these SmarDTV Global Ts & Cs which, unless expressly otherwise agreed in writing, shall prevail in the event of a discrepancy with any other written or oral agreement between SmarDTV Global and Buyer.

If a Buyer's PO contains different terms and conditions from the ones herein agreed, acceptance by SmarDTV Global of Buyer's PO shall not mean acceptance of the different terms and conditions indicated in the PO, unless such different terms and conditions are expressly accepted by SmarDTV Global by way of referencing them in the Order Acknowledgement and authorizing them in writing.

1.2. SmarDTV Global public statements, advertisings, brochures, catalogues and other documents do not constitute a commitment.

**2. OFFER AND DOCUMENTATION**

- 2.1. SmarDTV Global offers are not binding. A contract shall only be made when SmarDTV Global has expressly confirmed Buyer's PO in writing.
- 2.2. SmarDTV Global is entitled to make technical and design changes with regards to descriptions and details in brochures, catalogues and other documents, and to implement Product changes with regards to design, construction and materials, provided that these changes do not impair the Product's proper functioning.
- 2.3. SmarDTV Global reserves all ownership and copyright in illustrations, drawings, calculations and other documents; they may only be made available to third parties with SmarDTV Global prior written consent; this applies in particular but not exclusively to documents marked as "confidential" or similar.

**3. PRICE**

- 3.1. Unless stated differently in the Order Acknowledgement, SmarDTV Global prices are FCA Singapore as per INCOTERMS® 2010.
- 3.2. All prices are exclusive of packaging charges, all taxes and customs duties.
- 3.3. SmarDTV Global is entitled to appropriately adjust prices in case increases occur after the conclusion of the contract, in particular if they are caused by collective bargaining agreements or increases in the price of materials.

**4. INVOICING AND PAYMENT**

**4.1. Goods (HW + SW)**

Unless stated differently in the Order Acknowledgement the invoiced amount shall be paid in full in advance through direct bank transfer or by letter of credit at sight.

**Services**

Payments shall be made through direct bank transfer within thirty (30) days from the date of invoice.

- 4.2. If Buyer fails to make any payment on the due date, SmarDTV Global may withhold delivery until full payment is tendered (including payment of interests set forth in Clause 4.3 below).
- 4.3. If payments due are not paid within (30) days of the date of invoice, SmarDTV Global is entitled to, without prejudice to any other rights, charge interests of the lower between one and a half percent (1,5%) per late month (pro rata temporis) and the maximum permitted by law from the due date of each payment until the date of the full payment.
- 4.4. PO cancellation must be submitted in writing to SmarDTV Global prior to acceptance. For cancellation that occurs earlier than eight (8) weeks prior to delivery date, SmarDTV Global will charge a fee equals to thirty percent (30%) of the total PO amount. From eight (8) weeks prior to delivery date, confirmed POs become non-cancellable.
- 4.5. Buyer shall not set off a debt to SmarDTV Global against its claims against SmarDTV Global.
- 4.6. If several invoices are outstanding, payments may, irrespective of Buyer's instructions to the contrary, be credited to the oldest debt. If interest and costs have accrued, payments will be credited first to the costs, then to the interest and finally to the principal debt.
- 5. DELIVERY AND TRANSFER OF RISKS**
- 5.1. Unless stated differently in the Order Acknowledgement, delivery conditions are FCA Singapore, as per Incoterms® 2010. If delivery is delayed or rendered impossible for reasons beyond SmarDTV Global's control, the risk passes to Buyer upon notification that the Products are ready for shipment.
- 5.2. With the exception of pallets, transport and other packaging will not be taken back; Buyer is obliged to arrange disposal of the packaging at its own expense.
- 5.3. SmarDTV Global is entitled to partial and/or early shipments and performance.
- 5.4. Dates for the delivery of Products and Services are not binding, unless they have been confirmed as binding by SmarDTV Global in writing.
- 5.5. Compliance with delivery dates for Products and Services is conditional upon clarification of all technical questions, timely receipt of necessary authorizations, documents to be supplied by Buyer, releases and payments due, as well as the timely fulfillment of Buyer's other obligations, failing which, said delivery dates shall be reasonably extended. SmarDTV Global is entitled to terminate a contract or cancel an order if the export or import documents required for delivery to Buyer, in particular a necessary US export license, are not issued, or if one of SmarDTV Global's suppliers does not deliver as ordered or on time.
- 5.6. If non-compliance with a delivery date is caused by Force Majeure, industrial dispute, unforeseeable hindrances or other circumstances beyond SmarDTV Global's control, said dates shall be reasonably extended.
- 5.7. If a delivery date has not been confirmed in writing as binding, SmarDTV Global will only be placed in default by Buyer's written request for delivery, which may not be sent earlier than one (1) month after the expected delivery date.
- 5.8. In the event SmarDTV Global does not comply with a delivery date confirmed in writing as binding or with Buyer's request in accordance with Clause 5.7 for reasons other than those stated in Clauses 5.5 and 5.6 above, Buyer may terminate that part of the contract which covers the delivery in delay as far as SmarDTV Global is responsible therefore, provided that Buyer has served a written notice granting a reasonable extension of not less than two (2) more weeks and stating its intention to terminate the contract in case this is not met. Should SmarDTV Global be in delay with regard to only part of a delivery due, Buyer is entitled to terminate the entire contract only if partial performance is of no interest to it. Other claims exist only as stated in Clause 9 (Liability).
- 5.9. On SmarDTV Global's request, Buyer shall within a reasonable period of time assert whether - because of the delay in delivery - Buyer terminates the contract and/or claims damages in lieu of performance or still wishes performance.
- 5.10. To the extent that delivery or performance is impossible, Buyer is entitled to claim damages, unless the impossibility is due to reasons beyond SmarDTV Global's control. Buyer's possible claim for damages is, however, limited to an indemnity of maximum ten percent (10 %) of the value

of the part of the delivery or performance, which cannot be used, it being understood that such liquidated damages will be paid by SmarDTV Global in full satisfaction of any possible claim by Buyer.

5.11. In case of default of acceptance by Buyer for reasons not attributable to SmarDTV Global or to the performance of SmarDTV Global's obligations, SmarDTV Global shall be entitled to claim direct damages SmarDTV Global incurs, including additional expenditures, provided that such expenditures are reasonable and duly proved. Subject to Clause 5.1, the risk of accidental loss or accidental deterioration shall also pass to Buyer at the date of default of acceptance.

## **6. RESERVATION OF TITLE**

- 6.1 SmarDTV Global reserves title to the Products until full payment of the invoice. Buyer shall treat the Products with reserved title with due care, and in particular to adequately insure them at its own expense. In the event of a third party seizure or other attachment of the Products with reserved title, Buyer shall point out that this is SmarDTV Global's property and shall immediately notify SmarDTV Global in writing. Buyer shall bear all costs for an action claiming title to the attached property and other actions against such a third party attachment.
- 6.2 Buyer must take out an insurance policy for the Products covering them from the transfer of the risks to Buyer.
- 6.3 In case of Buyer's breach of contract, in particular default in payment, or in case of insolvency proceedings or if suspension of payments is to be expected, SmarDTV Global shall be entitled at its sole option to take one or several of the following measures: (i) require that the price for the Products with reserved title becomes immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, (ii) revoke Buyer's authorization to collect amounts due, (iii) resell, process, treat or combine Products with reserved title (iv) at Buyer's expense recover the Products with reserved title, (v) require the assignment to SmarDTV Global of Buyer's claim against a third party to return the Products with reserved title and/or (vi) terminate the contract. These rights exist even if the claims secured thereby have become time-barred. Taking back the Products with reserved title does not require SmarDTV Global's termination of the contract.

Termination of the contract only occurs if SmarDTV Global has expressly declared such in writing. SmarDTV Global is entitled to dispose of the Products with reserved title and set off the proceeds against SmarDTV Global's claims against Buyer.

## **7. WARRANTY**

- 7.1. SmarDTV Global warrants that all Products delivered hereunder will be free from defects in materials and workmanship for the limitation period in Clause 7.4. If during the limitation period a Product shows a defect, which already existed at the time of transfer of risk, SmarDTV Global will at SmarDTV Global's option and expense repair the defect or supply a replacement. In case of a Service that requires SmarDTV Global to bring about a specific result, SmarDTV Global will free of charge improve or repeat the Service.
- 7.2. Product or Service is defective if it does not conform to the written agreement between Buyer and SmarDTV Global. In the absence of a written agreement, Product or Service is only defective if it does not conform to SmarDTV Global's specification.
- 7.3. Without prejudice to Clause 7.1, Buyer's claims for defects are excluded for:
- development samples, prototypes and preproduction deliveries;
  - minor divergences from the agreement or specification which do not affect the main features of the Product or its functionality;
  - minor interference in usability, provided that such interference does not affect the normal use of the Product;
  - damages caused after the transfer of risk by external influences such as fire, water, currency surge, etc.; improper installation, operation, use or maintenance; use in fields of application and environmental conditions other than those SmarDTV Global expressly specified; and use in combination with other products not approved by SmarDTV Global for this purpose, excessive stress or normal wear and tear;
  - software defects, which cannot be reproduced;
  - Buyer's or a third party's improper alterations or repairs of Products and results therefrom;
  - in so far as Buyer has not notified SmarDTV Global of apparent defects within five (5) business days of delivery

and of hidden defects within five (5) business days of discovery.

7.4. Unless otherwise agreed by the Parties, the limitation period for warranty claims is twenty-four (24) months from delivery or acceptance of a Service. Repeat performance does not restart the limitation period.

7.5. If the analysis of an alleged defect shows that it is not covered by the above warranty, SmarDTV Global shall charge for the failure analysis and repair, if any, at SmarDTV Global's then applicable rates; in this case, the shipment costs for the return of Products will not be reimbursed and their return shall be at Buyer's expense and risk.

7.6. Except for the express limited warranty in Clause 7.1, SmarDTV Global makes and Buyer receives no warranties or conditions on the Products, either express, implied, statutory, or in any other provision of the contract or communication with Buyer, and SmarDTV Global specifically disclaims all implied warranties of merchantability and fitness for a particular purpose.

## 8. INTELLECTUAL PROPERTY RIGHTS

8.1 SmarDTV Global represents that, to the best of its knowledge at the time of delivery, the Products supplied do not violate any patent, license, patented drawings and models, copyrights, rights to masks or any other intellectual or industrial property rights of a third party. SmarDTV Global represents that, to the best of its knowledge, it holds all the rights to utilize, manufacture and sell the Products.

8.2 Subject to Buyer's full compliance with the present GSC, SmarDTV Global hereby grants to Buyer a limited, non-exclusive, non transferable, limited to the territory set forth in the Order Acknowledgement, right to sell and distribute the Products (the "License"). The License is limited to the lawful and non-infringing use of the Products and shall not extend to any other software or hardware of SmarDTV Global. Nothing in these GSC is intended to give Buyer or any third party any right of ownership with respect to the Intellectual Property Rights in the Products.

8.3 In the event that terms and conditions of these GSC are not correctly upheld by Buyer, SmarDTV Global is entitled to elect, at its sole discretion, to suspend the License after thirty (30) calendar days

written notice. In the event of License suspension, the License may be reinstated at the discretion of SmarDTV Global depending entirely upon corrective actions of Buyer related to the proper administration of these GSC. License suspension shall occur without prejudice to SmarDTV Global's other rights.

8.4 SmarDTV Global will defend any suit or proceeding brought against Buyer to the extent that such suit or proceeding is based on a claim that Products sold by SmarDTV Global to Buyer constitute a direct infringement of a valid patent of a third party and that the intellectual property rights of SmarDTV Global (excluding intellectual property and items supplied by non affiliated third parties) misappropriate a third party trade secret, or infringe a copyright, patent, or other intellectual property right of a third party. Subject to Clauses 8.7 and 8.8, SmarDTV Global shall pay all damages and costs awarded by final judgment (from which no appeal may be taken) against Buyer, on condition that SmarDTV Global:

- i) is promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement,
- ii) is given authority, information and assistance necessary to defend or settle such suit or proceeding in such manner as SmarDTV Global shall determine,
- iii) is given sole control of the defense (including the right to select counsel) and the sole right to compromise and settle such suit or proceeding, and
- iv) is found guilty of infringement and of misappropriation.

8.5 SmarDTV Global shall not be obligated to defend, shall not be liable for costs and damages and shall have no intellectual property indemnification obligation for any infringement or claim which results from:

- i) the use of other than unaltered version of SmarDTV Global's Products, if the infringement is avoided by using the unaltered version;
- ii) SmarDTV Global's compliance with designs, instructions or specifications of Buyer;
- iii) a combination with, an addition to, or modification of the Products.
- iv) use by Buyer of the Products or intellectual property of SmarDTV Global in violation of these GSC or in combination with intellectual property or materials not provided by SmarDTV Global where there would not be an infringement or claim except therefore; or



- v) any matter for which the Buyer has an obligation to indemnify hereunder.
- 8.6 If any Products manufactured and supplied by SmarDTV Global to Buyer are held to directly infringe any valid patent and Buyer is enjoined from using the same, or if SmarDTV Global believes such infringement is likely, SmarDTV Global will exert reasonable, at its option and its expenses,
- i) to procure for Buyer the right to use such Products free of any liability for patent infringement, or
  - ii) to replace or modify such goods with a non-infringing substitute otherwise complying substantially with all the requirements of the contract, or
  - iii) upon return of the Products, refund the purchase price and the transportation costs of such Products. If the infringement is alleged prior to completion of delivery of the Products, SmarDTV Global has the right to decline to make further shipments without being in breach of contract. If SmarDTV Global has not been enjoined from selling such Products to Buyer, SmarDTV Global is entitled (at SmarDTV Global's sole election), at Buyer's request, to supply such Products to Buyer, in which event SmarDTV Global shall be relieved from any and all obligations resulting from any violation of any patent, license, patented drawings and models, copyrights, rights to masks or any other intellectual or industrial property rights of a third party hereinabove stated.
- 8.7 Buyer's claims under this Clause 8 are excluded when Buyer has been warned or has otherwise become aware of a possible infringement and has not enjoined SmarDTV Global to stop the alleged infringement.
- 8.8 If Buyer discontinues the use of Products for damage reduction or other important reasons, Buyer is obligated to point out to the third party that the discontinuation of use does not constitute an acknowledgement of an infringement of intellectual property rights.
- 8.9 SmarDTV Global's liability under this Clause 8, if any, shall be strictly and solely limited to the amount of royalties which would be payable in respect of revenues derived by SmarDTV Global from Buyer from sales of the infringing Products. In no event shall SmarDTV Global be liable for royalties payable with respect to the use of such infringing Products, or subscriber revenues derived by Buyer therefrom or any royalty basis, other than as set forth above.
- 8.10 THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF SMARDTV GLOBAL HERETO FOR INFRINGEMENT OR THE LIKE PATENTS, TRADEMARKS AND COPYRIGHTS, AND OTHER PROPRIETARY PROPERTY RIGHTS, WHETHER DIRECT OR CONTRIBUTORY, AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY IN REGARD THERETO.
- 9. LIABILITY**
- 9.1. SmarDTV Global's maximum aggregate liability from any warranty, indemnity or any obligation arising out of or in connection with Products or Services delivered under these GSC, including tort claims and liquidated damages, or any use of any SmarDTV Global's Products or Services provided hereunder shall not exceed the sum of Buyer's payments for the Products or Services which are the subject of the dispute within the twelve (12) months period prior to the date the damages are claimed, net of any applied discounts, rebates and/or refunds.
- 9.2. Buyer acknowledges and agrees that the purchase price for the Products and Services to be sold hereunder reflects the allocation of risks and the limitation of SmarDTV Global's liability hereunder.
- 9.3. To the extent permitted by law, the remedies set forth in Clause 7 are Buyer's sole and exclusive remedies for breach of warranty and are in lieu of all obligations or liabilities on SmarDTV Global's part for damages, including, but not limited to special, indirect, incidental or consequential damages arising out of or in connection with the use or performance of the Products. In no event shall SmarDTV Global be liable for any special, indirect, incidental or consequential damages (including loss of profit, business, opportunity or goodwill where such losses are indirect or consequential) due to failure to perform its obligations hereunder.
- 9.4. Buyer's claims for damages shall be time-barred in accordance with Clause 7.4.
- 9.5. With the exception of liability for death or personal injury or liability resulting from gross negligence or fraud, the above limitations of liability shall apply to all claims, irrespective of their legal basis, in particular to all claims based on breach of contract or tort.

9.6. The above limitations of liability also apply to Buyer's claims for damages against SmarDTV Global's employees or agents, if any.

## **10. EXPORTATION / RE-EXPORTATION**

Products (hardware, software), which are the subject matter of this contract, may be subject to German, American, Singapore or other national export and import control regulations. Buyer undertakes to observe these control regulations in the event of exporting/re-exporting Products or technical data, which it has obtained from SmarDTV Global; this also applies to Products which it has manufactured on the basis of said technical data. SmarDTV Global is entitled to refuse to perform this contract if the above-mentioned control regulations would be infringed as a result.

## **11. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

- 11.1 These GSC and the rights and obligations of the Parties hereto shall exclusively be governed by and construed in accordance with the laws of France, without consideration to the conflict of law provisions or to the international treaties. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
- 11.2 Except in urgent situations requiring immediate action, the Parties shall attempt to resolve any disputes amicably through negotiation within six (6) months from the date of the event that gives rise to the dispute.
- 11.3 Furthermore, the Parties must formally initiate any legal action or claim against the other Party for an alleged breach of any obligation related to or arising out of the sale of Goods or Services subject to these terms and conditions within one (1) year of the date of the alleged breach or be forever barred from pursuing such action or claim.

11.4 In case of failure of amicable resolution attempt, any dispute, controversy or claim arising out of or in relation to these GSC, including the validity, invalidity, breach or termination thereof, shall be exclusively submitted to the jurisdiction of the competent courts of Marseille, France.

## **12. PERSONAL DATA PROTECTION**

- 12.1 Each Party warrants that it complies with all applicable data protection regulations. Each Party will take necessary care to ensure that any personal data provided by the other Party and/or its clients during the term of this Agreement shall not be disclosed except when required by law and warrants taking all appropriate necessary and/or mandatory actions and security measures in this regard.
- 12.2 Buyer may at any time access its data, request updating, deletion, rectification, blocking or oppose their processing by contacting: Data Protection Officer, SmarDTV Global SAS, 147 Avenue du Jujubier, ZI Athelia IV, 13600 La Ciotat, France - [dpo@neotion.com](mailto:dpo@neotion.com).

## **13. TRANSPARENCY, NON BRIBERY AND OTHER MEASURES**

SmarDTV Global has to comply with Act No. 2016-1691 of December 9, 2016 on transparency, non-bribery measures and modernisation of economic life known as "Loi Sapin II", notably with regard to the reporting of situations which may be such as to endanger the integrity or safety of employees and of the Seller.

More generally, the Parties undertake to comply, directly or indirectly (including but not limited to subcontractors) with the Code of Ethics established by SmarDTV Global. Additional information concerning the Code of Ethics of SmarDTV Global on its website: [www.smarDTV.com](http://www.smarDTV.com).

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