

**1. GENERAL INFORMATION**

- 1.1 For purposes of these conditions, the word "**Seller**" shall mean the legal entity **SMARDTV GLOBAL SAS**; the words "**Conditions**" or "**GSC**" shall mean these General Sales Conditions; 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 Conditions impossible; the word "**Set-Top Boxes**" or "**STB(s)**" shall mean any model of receiver device capable of receiving and descrambling controlled programs (including but not limited to set-top box, media center, television set with embedded decoder, Personal Video Recorder with hard disk drive, or other consumer premise or consumer electronics device) including packaging, described in the Order Acknowledgement. Common interface modules (CICAM modules) as well as Professional CAMs/ProCAMs and Professional Receivers are not covered by the present definition and are explicitly excluded from these GSC; the word "**Purchase Order**" shall mean the purchase order sent by Customer to Seller describing the STBs or Services purchased by Customer from Seller and delivered by Seller to Customer under these GSC; the word "**Order Acknowledgment**" shall mean the order acknowledgment sent by Seller to Customer after reception of the Purchase Order; the words "**Party**" and "**Parties**" shall mean Seller and Customer individually or collectively; the word "**Services**" shall mean the services (if any) described in the Order Acknowledgment ; the word "**Specifications**" shall mean the Seller's plans, drawings, directives of design, data and other relative information given by Seller to Customer concerning the order of STBs/Services; the word "**Customer**" shall mean the party which agrees to purchase the STBs/Services as specified in Seller's Order Acknowledgment.
- 1.2 The Order Acknowledgment itself and these GSC are indivisible.
- 1.3 In the event Customer does not oppose to the Order Acknowledgment in writing within five (5) calendar days after the reception of the Order Acknowledgment or in the event

Customer accepts the STBs delivered by Seller before reception of the Order Acknowledgment, all conditions of this GSC are accepted by Customer.

- 1.4 These Conditions apply to all Purchase Orders and Order Acknowledgments. Customer's general conditions shall not be applicable unless there is an express written agreement of Seller to the contrary.
- 1.5 To be valid against Seller, any amendments or supplements to these Conditions and/or the Order Acknowledgments must be made in writing, signed by both Parties.

**2. PRICE, INVOICE AND PAYMENT**

- 2.1 Invoices shall be issued in the currency cited in the Order Acknowledgment.
- 2.2 The applicable price is the one given in the Order Acknowledgment or the one resulting from the calculation of the price stipulated in the Order Acknowledgment. Unless otherwise agreed in writing, the price does not include any taxes, other possible government levies, transport costs and special packaging, which are to be paid by Customer. Current packaging will be charged at Seller's manufacturing costs.
- 2.3 Unless there is a stipulation to the contrary in the Order Acknowledgment, invoices shall be payable thirty (30) days from the date of issuance of the invoice.
- 2.4 If the Parties have agreed on payment in advance, without further indication, it will be assumed that such advance payment, unless otherwise agreed, refers to the full price, and that the advance payment must be received by Seller's bank in immediately available funds at least thirty (30) days before the agreed date of delivery or the earliest date within the agreed delivery period. If advance payment has been agreed only for a part of the contract price, the payment conditions of the remaining amount will be determined according to the rules set forth in this article 2.
- 2.5 In case Customer fails to pay Seller in the stipulated period, Customer shall have to pay Seller interests of the lower between (i) one and a half percent (1,5%) per late month (pro rata temporis) and (ii) the maximum permitted by law, from the due

date of each payment until the date of the full payment. This shall be without prejudice of other rights of Seller according to these Conditions and at law. Failure by Seller to charge or collect interest on payments past due shall not be construed as a waiver of its right to collect amounts due or of its legal rights and remedies.

- 2.6 Customer shall not set off a debt to the Seller against its claims against the Seller.

### **3. DELIVERY / EXECUTION**

- 3.1 A term for delivery agreed upon is a target term. If Customer owes a payment in advance, has to give security or has to supply information and/or materials needed for the execution of the Purchase Order, the term is not effective until payment in advance has been received in full, security has been given or the needed information and/or materials have been supplied.
- 3.2 Agreed time of delivery may be adjusted by Seller if Customer fails to fulfill any points agreed. Any changes to the Order Acknowledgment requested by Customer may change the time of delivery.
- 3.3 Seller is entitled to suspend a delivery on account of unsettled financial obligations by Customer to Seller.
- 3.4 If the Parties have not agreed on a specific date for the delivery/execution, Seller shall place the STBs/Services at Customer's disposal within a reasonable period of time.
- 3.5 A Purchase Order cannot be terminated by Customer on account of deliveries not made on time. If STBs are not delivered on the agreed time, Customer is entitled to request that Seller provides a fixed delivery date.
- 3.6 Early deliveries shall be authorized unless the contrary has been notified in advance in writing to Seller by Customer.
- 3.7 Unless otherwise specified in the Order Acknowledgment, the applicable Incoterm® for delivery shall be FCA Shenzhen (FCA) as per the Incoterms® 2010 at Seller's manufacturing plant.

### **4. PACKAGING**

- 4.1 The STBs shall be sealed, packaged, marked, and in general prepared for shipment according to commercial usage.
- 4.2 When the STBs are ready for shipment, Seller shall send to Customer a commercial invoice for shipment and customs purposes and a packing list including at least:
- the date and full references of the Order Acknowledgment
  - the full address of the warehouses of the shipper and the consignee
  - an itemized description of the STBs
  - the total number of packages in the shipment
  - the gross and net weight of each package
  - the means of transportation, and
  - if known, the date of shipment.

### **5. CANCELLATION**

- 5.1 In case of cancellation not due to Seller's fault, the latter is entitled to claim full compensation taking into account the date of cancellation, the work done and the costs and expenses already incurred by Seller for the cancelled Order Acknowledgment, and the possibilities of selling the STBs to other customers. In such case, Customer shall also compensate Seller for all manufacturing and procurement costs incurred prior to said cancellation.

### **6. FORCE MAJEURE**

- 6.1 Neither Party shall be liable for any failure to perform any of its obligations under these Conditions (other than performance of any obligation to make any payment) during any period in which such Party cannot perform due to a case of Force Majeure.
- 6.2 In case of Force Majeure, the Party affected shall advise the other Party without delay, and the following stipulations will be applied:
- 6.2.1 The affected Party will be relieved of its obligations resulting from the relevant Order Acknowledgment for the duration of Force Majeure ;
- 6.2.2 If delivery or receipt is delayed by more than thirty (30) calendar days because of a case of Force Majeure, Seller, excluding all other claims, may, at its option cancel the relevant Purchase Order covering the quantities

affected by this delay and/or extend the delivery dates so as to permit partial or complete delivery of the STBs/Services.

## 7. TRANSFER OF TITLE, RISKS AND INSURANCE

- 7.1 Seller reserves title to the STBs until full payment of the invoice. Customer shall treat the STBs with reserved title with due care, and in particular to adequately insure them at its own expense.
- 7.2 Risks shall be transferred to Customer in accordance with the applicable Incoterm® 2010 cited in article 3.7 above or in the Order Acknowledgment.
- 7.3 Customer must take out an insurance policy for the STBs covering them from the transfer of the risks to Customer.

## 8. WARRANTY AND LIABILITY

- 8.1 Hardware Warranty: Seller warrants that for a period of twenty-four (24) months after delivery hardware of the STB will conform with the agreed specifications and will be free from defects in material, fabrication and workmanship.
- 8.2 Software Warranty: Seller warrants that for a period of three (3) months after delivery the Seller's proprietary software of the STB will be compliant to the agreed specification. Any third party software embedded in the STB is provided "as is" and the Seller expressly disclaims any and all express and implied warranties relating thereto and all liability for any direct and indirect damages related to such third party software.
- 8.3 Seller's warranty obligations set forth in this article 8 shall not apply where:
  - (a) the STB serial number has been defaced or removed and the STB cannot otherwise be identified;
  - (b) STB have been damaged;
  - (c) STB have been submitted to abnormal conditions (mechanical, electrical, Electrostatic Discharges or thermal) during storage installation or use;
  - (d) STB are used in a non-standard environment. A non-standard environment is an environment requiring a robustness not documented in the applicable specification such as without limitation, space, military and or nuclear environments;
  - (e) STB supplied at request of Customer which Seller

has indicated may not conform (engineering products) to the specification or constitute experimental, developmental or non-qualified products; (f) the non-conformance of the STB results from excess usage of the maximum values (temperature limit, maximum voltage) defined by Seller, or from an incorrect choice of application by Customer, or from use other than in accordance with the relevant specification; (g) the default is not attributable to the Seller; (h) the defect cannot be reproduced; (i) the problems arising from a misuse of the STB or any Force Majeure Event.

- 8.4 For the purpose of the granted warranty for the STBs delivered under this GCS, Seller will provide 1% spare STBs of the ordered volume on top of the ordered volume. Both Parties agree that this delivery of 1% spare STBs on top of the ordered volume will be SmarDTV Global's sole warranty obligation in relation to any defect of the delivered STBs to the extent that this spare delivery covers the defective under warranty STB. For the case where defective STB under warranty are not covered by this spare delivery the Return Material Authorization procedure as foreseen in Attachment 1 of this GTC shall apply.
- 8.5 Seller guarantees to Customer that upon complete payment it will transfer full and entire ownership of the STBs to Customer.
- 8.6 Seller guarantees to Customer that the Services will be performed by a duly qualified, trained person, with the required care and diligence and the maximum level of care and quality which Customer has a right to expect in all circumstances.
- 8.7 If Seller does not meet its obligation to replace or repair STBs or to correct a defect or dysfunction, Customer shall have the right, at its sole discretion and on a sole remedy basis, to
  - 8.7.1 make the replacement, repair or correction itself, at the expense of Seller, such repair cost for a STB not to exceed the unit price of the same STB purchased
  - 8.7.2 have the replacement, repair or correction made by a third party, at the expense of Seller, such repair cost for a STB not to exceed the unit price of the same STB purchased
  - 8.7.3 obtain reimbursement from Seller of the full purchase price of the defective or dysfunctional STB.

- 8.8 Warranties and liabilities related to intellectual or industrial property rights are subject to articles 9 and 10 hereunder.
- 8.9 Seller shall have no obligation whatsoever to provide any warranty service to end-users.
- 8.10 THE ABOVE WARRANTIES AND REMEDIES ARE EXCLUSIVE AND SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE STBS/SERVICES, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES.

## 9. LIMITATION OF LIABILITY

- 9.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE STBS/SERVICES OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, EVEN IF THE SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.2 In no event shall Seller's liability arising out of these Conditions exceed an amount equal to the fifty per cent (50%) of the amount received by Seller from Customer under the Order Acknowledgement giving raise to the claim. In no event shall Seller be liable for the combination of the STBs/Services with third party hardware, software or data in a manner that leads to the infringement of a third party's intellectual property rights.
- 9.3 Seller expressly disclaims any liability or damages in excess of the limits provided for above.

## 10. INTELLECTUAL OR INDUSTRIAL PROPERTY RIGHTS

- 10.1 Subject to Customer's full compliance with the present Conditions, Seller hereby grants to Customer a limited, non-exclusive, non transferable, limited to the territory set forth in the Order Acknowledgement, right to sell and distribute the STBs (the "License"). The License is limited to the lawful and non-infringing use of the STBs and shall not extend to any other software or hardware of Seller. Nothing in these Conditions is intended to give Customer or any third party any right of ownership with respect to the Intellectual Property Rights in the STBs. The License granted herein do not include any licenses to third party Intellectual Property Rights that may be necessary in connection with the use of a user interface or electronic program guide in connection with the STB. In the case that the utilisation of the STB requires the acquisition of licenses from third parties, then Customer shall be responsible for acquiring such third party licenses. The Customer shall indemnify, defend and hold the Seller harmless from any and all damages, liabilities, costs, losses and expenses incurred by the Seller, should the Customer does not acquire such third party licenses.
- 10.2 In the event that terms and conditions of these Conditions are not correctly upheld by Customer, Seller 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 Seller depending entirely upon corrective actions of Customer related to the proper administration of these Conditions. License suspension shall occur without prejudice to Seller's other rights.
- 10.3 Subject to the limitations of article 10.6, Seller shall pay all damages and costs awarded by final judgment (from which no appeal may be taken) against Customer arising from claims by any third party that STBs sold by Seller to Customer within the License territory constitute a direct infringement (i) of any Berne Convention copyright within the authorized distribution Territory; (ii) of a patent of another person ; or (iii) misappropriates or unlawfully discloses or uses a third-party's trade secret. Seller's obligations hereunder shall be expressly conditioned upon the Seller:
- i) is promptly informed and furnished a copy of each communication, notice or other action relating to the alleged

- ii) infringement,
- is given authority, information and assistance necessary to defend or settle such suit or proceeding in such manner as the Seller 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.

10.4 The Seller 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 Seller's STB, if the infringement is avoided by using the unaltered version;
- ii) Seller's compliance with designs or specifications of Customer;
- iii) a combination with, an addition to, or modification of the STBs.
- iv) use by Customer of the STBs or intellectual property of Seller in violation of these GSC or in combination with intellectual property or materials not provided by Seller where there would not be an infringement or claim except therefore; or
- v) any matter for which the Customer has an obligation to indemnify hereunder.

10.5 If any STBs manufactured and supplied by Seller to Customer are held to directly infringe a patent of another person pursuant article 10.3 above and Customer is enjoined from using the same, or if Seller believes such infringement is likely, Seller will exert reasonable, at its option and its expenses,

- i) to procure for Customer the right to use such STBs free of any liability for patent infringement, or
- ii) to replace or modify such STB with a non-infringing substitute otherwise complying substantially with all the requirements of the agreed specifications ,or
- iii) upon return of the STBs, refund the purchase price and the transportation costs of such STBs. If the infringement is alleged prior to completion of delivery of the STBs, Seller has the right to decline to make further shipments without being in

breach under these Conditions and the applicable Order Acknowledgment. If Seller has not been enjoined from selling such STBs to Customer, Seller is entitled (at Seller's sole election), at Customer's request, to supply such STBs to Customer, in which event Seller 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.

10.6 Seller's liability under this article 10, if any, shall be strictly and solely limited to the amount of royalties which would be payable in respect of revenues derived by Seller from Customer from sales of the infringing STBs. In no event shall Seller be liable for royalties payable with respect to the use of such infringing STBs, or subscriber revenues derived by Customer therefrom or any royalty basis, other than as set forth above.

10.7 THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF SELLER 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 STATUATORY IN REGARD THERETO.

**11. CONFIDENTIALITY, DOCUMENTS AND COMMUNICATION**

11.1 The Parties agree that all confidential information supplied by a Party to the other, pursuant to this Agreement and/or in relation to, shall be subject to the terms and conditions of the Non Disclosure Agreement in force between the Parties. In case no Non Disclosure Agreement is in force between the Parties, any information exchanged by the Parties will be deemed confidential information.

11.2 At Seller's request, Customer shall immediately return to Seller all confidential or commercially sensitive information which has been communicated to it by Seller.

11.3 Customer is not authorized to publicize its commercial relations with Seller without the latter's express, written authorization.

- 11.4 Any written or oral communication and any publication to third parties concerning the Order Acknowledgment or its contents shall be subject to Seller's prior written consent.

## 12. PROHIBITION TO ASSIGN

- 12.1 All Order Acknowledgments can not be subcontracted, assigned or transferred to another person or entity without Seller's prior written agreement.

## 13. EXPORT

- 13.1 Customer warrants that products, software, commodities, services and technical data provided by Seller under these Conditions, as well as the direct product thereof, shall not be, nor intended to be, shipped, directly or indirectly, to countries or entities prohibited by U.S., European, or other applicable law.

## 14. MISCELLANEOUS

- 14.1 If one clause of these Conditions is found to be or subsequently becomes inoperative, the validity of these Conditions and of the Order Acknowledgment shall not be affected thereby.
- 14.2 The fact that one of the Parties does not exercise, or delays to exercise, one of its rights under the Order Acknowledgment or the GSC shall not be interpreted as a waiver of such right; likewise the sole or partial exercise of a right shall not exclude the exercise of any other rights. To be valid, any waiver must be in the form of a written document signed by the waiving Party.
- 14.3 Each Party shall be considered to be independent. These Conditions in no way create a joint company, a partnership or any other form of association by the Parties and never designate one Party the agent or legal representative of the other Party for any purpose whatsoever. Neither Party is authorized or empowered to assume or create an explicit or implied obligation or responsibility for the account and in the name of the other Party, nor to commit the other Party in any manner or in any area whatsoever.

## 15. APPLICABLE LAW AND JURISDICTION

- 15.1 These Conditions shall be interpreted, construed and enforced in accordance with the laws of France without regard to its conflict of law provisions. The Parties specifically disclaim application of the United Nations Convention on Contracts for the International Sale of Goods.
- 15.2 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.
- 15.3 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.
- 15.4 In case of failure of amicable resolution attempt, any dispute, controversy or claim arising out of or in relation to these Conditions, including the validity, invalidity, breach or termination thereof, shall be submitted to the jurisdiction of the competent courts of Marseille, France.

## 16. PERSONAL DATA PROTECTION

- 16.1 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.
- 16.2 Customer 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.

**17. TRANSPARENCY, NON BRIBERY AND OTHER MEASURES – CODE OF ETHICS**

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.smartv.com](http://www.smartv.com).

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