

## **1 DEFINITIONS**

**Amendment(s):** any amendment to the definition of Sodern's technical requirements.

**Conditions of Purchase:** these Conditions of Purchase.

**Information:** any data or information of any nature whatsoever (technical, commercial, financial or other) communicated or obtained directly or indirectly during the execution of the work, by any means and in any form whatsoever, and, without this list being exhaustive, all know-how, procedure, method, plan, drawing or study, including those likely to be protected by intellectual property rights.

**Party or Parties:** individual or collective designation of Sodern and the Supplier.

**Site:** Sodern's site at 20, Avenue Descartes, 94450 Limeil-Brévannes Cedex, France.

**Special Conditions:** the special conditions specified in the order by Sodern which amend and/or supplement the Conditions of Purchase.

**Specific Equipment:** any prototype, machine, tool, mould, template and/or test installation made available by Sodern to the Supplier or designed and/or manufactured by the Supplier for the requirements of the order.

**Supplier:** the actual person or legal entity who executes the Work as part of an order.

**Work:** all the supplies and/or services carried out by the Supplier in accordance with the terms of the order.

## **2 ACCEPTANCE OF THE ORDER**

**2.1** Acceptance of the order implies the acceptance of these Conditions of Purchase and Special Conditions. In the case of any contradiction, the Special Conditions take precedence over the Conditions of Purchase.

**2.2** The order is considered to be accepted, after return to the Sodern representative named on the order of the acknowledgement attached to the order form, and duly signed by the Supplier, within a deadline consistent with the delivery deadlines specified on the order and within five (5) working days at the latest following receipt of the aforementioned order. Where this procedure is not followed, the Supplier shall be considered to have accepted these Conditions of Purchase and Special Conditions detailed in the order where execution of the Work has commenced.

**2.3** Orders considered as valid shall only be those that have been written and issued by Sodern's Procurement Department, and duly signed by its authorized representative.

## **3 EXECUTION OF THE ORDER**

**3.1** The Supplier is held under the obligation to execute the order in accordance with these Conditions of Purchase and the Special Conditions. Acceptance of any order implies that the Work shall comply with:

- documents and data specified in the order and
- the general norms and standards and the technical inventory.

**3.2** The Supplier must execute the Work strictly in accordance with the standards, directives, laws and regulations in force and in particular shall affix the "EC" marking and provide Sodern with the corresponding certificate of conformity.

## **4 AMENDMENT OF THE ORDER**

**4.1** Any amendment to these Conditions of Purchase and/or the Special Conditions specified in the order shall only be made subject to Sodern's prior written consent.

**4.2** The order is modified, after its acceptance, by means of a written codicil signed by both Parties.

## **5 MONITORING THE WORK**

The work shall be monitored by means of various meetings between the Supplier and Sodern, and possibly with the end customer, the terms of which shall be determined in the order. Minutes shall be drawn up at the end of each meeting and must be signed by the Parties.

## **6 ACCESS TO THE SUPPLIER'S SITE**

With reserve to meeting the internal regulations and safety rules of the Supplier and/or his subcontractors and suppliers, Sodern's representatives and/or its customers shall have access to the site at which the Work is executed, whether this is done at the Supplier's site or his subcontractors' and suppliers' site, at any time during the working day.

## **7 CONFIDENTIALITY**

**7.1** All Sodern's Information remains the property of Sodern, which formally prohibits its use for purposes other than the execution of the order, except with Sodern's prior written consent.

**7.2** The Supplier undertakes to disclose Sodern's Information only to his members of staff and/or to the members of staff of the authorised subcontractors and suppliers who need to know this information for the execution of the Work. The Supplier undertakes to inform his employees, subcontractors and suppliers of the strictly confidential nature of the aforementioned Information and that they undertake to meet the aforementioned obligation for confidentiality.

**7.3** On expiry or cancellation of the order and/or at any time Sodern requests, the Supplier must return any of Sodern's Information, along with any copies in his possession, on any media support whatsoever within two (2) weeks. Fulfilling this obligation is conditional for the payment of the final instalment or possible balance for which Sodern should be liable in the case of cancellation in accordance with the terms of Article 24 below. Sodern shall also be able to demand that the Supplier destroys the copies.

**7.4** This obligation for confidentiality shall be applicable from the acceptance of the order and shall remain in force for eight (8) years from the end of the contractual relationship between the Parties. In addition, publication of the Work shall be subject to Sodern's prior written consent.

## **8 SPECIFIC EQUIPMENT**

**8.1** Specific Equipment may be designed and/or manufactured by the Supplier under the provisions of the order. In this case, the price of this Specific Equipment shall be included in the total price stated on the order, and Sodern shall become the owner of this Specific Equipment.

**8.2** For all Specific Equipment, the Supplier provides Sodern with the specifications, plans and any other useful information for the design, manufacture, implementation and maintenance of the aforementioned Specific Equipment. These documents must exclusively bear the following statement, or if not, the one specified on the order: "This document is the property of Sodern; it shall not be communicated to any third parties and/or be reproduced without Sodern's prior written consent. © – Sodern (date of publication)". These documents must be sent to Sodern as soon as they have been drawn up or, at the latest, when the Specific Equipment is put into service.

**8.3** Sodern shall be able to make available to the Supplier any Specific Equipment for the execution of the order. Any modification and/or adaptation to any Specific Equipment made available by Sodern shall be subject to Sodern's prior written authorisation, which defines the condition in which the modified Specific Equipment must be returned to Sodern.

**8.4** The Supplier undertakes to use any Specific Equipment at his premises solely for the execution of the Work subject to the order. Any change of use and/or location of use are subject to Sodern's prior written consent.

**8.5** The Supplier is fully liable for Specific Equipment needed for the execution of the order. Unless otherwise agreed in the order, the Supplier undertakes to bear all costs related to the following obligations:

- its custody and maintenance in perfect working order, and its safekeeping according to its type, standards and instructions applicable to such Specific Equipment,
- the replacement of damaged and/or lost Specific Equipment, or Specific Equipment subject to abnormal or excessive wear and tear,
- its return to Sodern in perfect working order, on request from Sodern by registered letter.

## **9 TRANSPORT, DELIVERY AND TRANSFER OF RISK**

**9.1** All Work must be delivered in accordance with the terms of “Delivered Duty Paid” (DDP – ICC Incoterms 2000) to the Site or place of delivery specified on the order by Sodern, unloading being at the cost and risk of the Supplier.

**9.2** The Supplier undertakes to deliver the Work in packaging suitable for its type, by a method of transport and storage which ensures delivery in perfect condition. Packaging is made in accordance with the regulations and standards in force under the responsibility of the Supplier

**9.3** Delivery of the Work must be accompanied by the documentation specified in the order.

**9.4** The Supplier is liable for any damage to the Work due to incorrect, inappropriate and insufficient packaging, marking or labelling. The Supplier shall be obliged to replace, at his own risks and costs and within the deadlines specified by Sodern, any Work lost or damaged.

**9.5** All Work deliveries to Sodern shall be done on working days from 8.00am to 12.00pm. and from 12.30pm to 4.00pm.

**9.6** The Supplier shall specify on each package the Supplier’s logo, the sender’s name and address, the Sodern representative’s name, as well as the order reference number. On entering the site, the carrier must specify the reason for his visit and present proof of identity, which will be returned to him on leaving the Site. The carrier must complete documentation relating to the loading and unloading operations.  
All deliveries must be accompanied by a delivery note stating the abovementioned information.

## **10 EXPORT AND/OR IMPORT REGULATIONS**

**10.1** In the case where the use of components not subject to export and/or import regulations is possible for the completion of the Work, the Supplier undertakes to choose these components throughout the completion of the Work. Any violation of this obligation leads to the cancellation of the order in accordance with Article 24.1 below.

**10.2** The Supplier undertakes to advise Sodern in writing of all components of the Work which are subject to export and/or import regulations on the date the order is signed. In the case of any amendments to the export and/or import regulations applicable to the work or its components, the Supplier undertakes to notify Sodern immediately all information relating to such amendments and to provide Sodern with any assistance needed for Sodern to comply with such amendments.

**10.3** The Supplier is responsible for obtaining, within a reasonable period and at his own costs, any permits, approvals or licences necessary for the export, import, use by Sodern and its customer of the Work and its components subject to export and/or import regulations (hereafter referred to as “Permits”). In particular, the Supplier must draw up, within a reasonable period of time and at his own costs, the file relating to all permit applications for allowing the delivery of the Work within the contractual deadline.

**10.4** The Supplier undertakes to deliver the Work accompanied by a copy of all Permits required.

**10.5** Any refusal, withdrawal or suspension of a Permit shall be considered as a case of force majeure as defined in Article 22 below, unless such a refusal, withdrawal or suspension is due to the Supplier not complying with his obligations defined in this article, and in particular if he has made an error in drawing up his application for the Permit.

## **11 SUBCONTRACTING**

**11.1** In the case of recourse to subcontracting for the execution of a part of the Work, the Supplier undertakes to notify Sodern the list of its subcontractors in writing. Sodern reserves the right to refuse or to change this subcontracting. At the request of Sodern, the Supplier must send a copy of the contracts concluded with the subcontractors.

**11.2** The Supplier remains solely and fully liable with regard to Sodern, for all the Work, whether executed by itself or by its own subcontractors and/or suppliers. The Supplier guarantees and indemnifies Sodern against any claims from the Suppliers’ subcontractors and/or suppliers.

**11.3** The Supplier undertakes to have Sodern's requirements accepted by its subcontractors and/or suppliers.

## **12** DEADLINES

**12.1** The contractual completion dates stipulated in the order are compulsory.

The Supplier undertakes to inform Sodern promptly of any delay in fulfilling his obligations, and its causes. He undertakes, at his own costs, to minimise these delays by any means, and to inform Sodern of the measures he intends taking to make up for these delays. The fact of informing Sodern of any delay does not reduce in any case the Supplier's contractual liability regarding his obligations as part of the order.

**12.2** Without prejudice to any damages and interest which could be claimed by Sodern from the supplier, delays in completion dates leads to the application of late penalties as follows:

$$P = (V \times R) / 2000$$

Where:

P = amount of penalties

V = total amount of the order

R = number of calendar day's delay from the completion date specified in the order, up to the effective completion date of the whole complying Work.

These penalties, at Sodern's sole option, shall be able to be immediately deducted at the time of invoicing.

**12.3** If the Supplier's delay should become inconsistent with the constraints of Sodern's schedule, Sodern shall then be able to decide to:

- Cancel all or part of the order due to a breach of contract by the Supplier, in accordance with Article 24.1
- Transfer to any other Supplier all or part of the execution of the Work relating to the order, at the cost and risks of the Supplier

**12.4** All Work rejected by Sodern shall be considered as not delivered.

**12.5** The Supplier should request Sodern's prior written agreement for all Work which will be executed or delivered before the scheduled contractual dates. This early execution or delivery shall not give rise to any early payment before the corresponding due date, nor to any bonus.

## **13** SITE ACCESS

Access to the Site is regulated and can be subject to prior authorisation from Sodern's supervising authority.

- for personnel with French nationality or from a member state of the European Union, access to the site does not require prior notice.

- for personnel from a State other than those of the European Union, any visit to the Site must be notified to Sodern with a minimum advance notice of six (6) weeks. Access to the Site can be barred without any compensation being able to be claimed from Sodern.

## **14** AMENDMENTS

### **14.1 Amendments requested by Sodern**

Sodern may request, at any time and in writing, any amendment to be made relating to the execution of the Work. The Supplier undertakes to accede to this request after written agreement by the Parties by means of a codicil to the terms of such an Amendment. The Supplier must make known, without delay, the possible consequences of these Amendments, in particular relating to the deadlines, costs and quality.

### **14.2 Amendments requested by the Supplier**

Any Amendment proposed by the Supplier must be subject to Sodern's prior written agreement. These Amendments are regulated by the terms of Article 14.1 above. In the case where these terms should not be met, Sodern reserves the right to demand that the Work concerned be brought into compliance with the requirements of the order, at the Supplier's costs, as well as payment of any expenses incurred by Sodern from this fact.

## **15**

## ACCEPTANCE OF THE WORK AND TRANSFER OF OWNERSHIP

**15.1** The Supplier undertakes to execute and deliver the Work in accordance with the terms of the order.

**15.2** Acceptance of the Work shall be declared by Sodern within at least two (2) months after its delivery.

**15.3** In the case where the Work should be rejected:

- the Supplier undertakes to put forward its observations within a deadline of five (5) working days of receipt of the reject notification, and
- Sodern shall be able to decide either to apply the terms of article 24.1 below, or after receipt of the Supplier's observations, request the Supplier to replace or repair the rejected Work, within the stated deadline, so as to make it comply with the requirements of the order. If the Supplier does not take the actions required to make the Work comply within the stated deadline, Sodern shall have the right to make the Work comply itself, or have done so by a third party, at the Supplier's cost.

**15.4** Transfer of ownership shall take place on acceptance, without prejudice, of the Work.

**15.5** The documentation relating to the Work shall be subject to Sodern's acceptance within a deadline of two (2) months from its receipt, in accordance with the terms of the order. Within this deadline, Sodern reserves the right to request corrections and amendments to the documentation delivered, which shall be carried out by the Supplier within a deadline consistent with Sodern's requirements.

## **16** WARRANTY

**16.1** Unless otherwise specified in the order and without prejudice to the application of legal warranties, the Supplier guarantees for a period of one (1) year from acceptance under Article 15 above, that the Work complies with the order, including in particular its applicable documents, and the norms and standards and technical inventory, and is free from any design, manufacturing or material fault.

**16.2** The contractual warranty means either the repair or replacement of all defective Work, or a refund to Sodern for the defective Work, and in both cases, at the costs and risks of the Supplier. After consultation between the Parties, the choice between these solutions and the terms of the implementation of the chosen solution (deadline and site where any Work is to be carried out, legal entity carrying out the solution due under the terms of the contractual warranty, etc.) is decided by Sodern.

The above warranty also applies, and under the same terms, to all repair or replacement Work.

## **17** PAYMENT

Unless stipulated otherwise, the price stated on the order for the execution of the Work is inclusive, fixed and definitive. The price is considered to include all the activities allowing the Supplier to fulfil his obligations as part of the order. Payments are made in euro.

The payment plan shall be determined on the order. Unless stipulated otherwise in the Special Conditions of the order, invoicing shall be done for the total price of the order on acceptance without prejudice of the Work complying with Article 15 above.

## **18** INVOICING

**18.1** An invoice is drawn up in duplicate for each order on acceptance of the Work complying with Article 15 above.

**18.2** The invoice must state in particular:

- the reference and the date of the order, the currency, the amount of VAT, the reference number of the corresponding delivery note, the essential information required by Article L 441-3 of the French commercial law, and the applicable Incoterm if necessary, as well as
- for the Supplier, the address of the establishment concerned, the form of the company, the amount of share capital, the head office address, the company registration number, the intra-Community VAT number and Sodern's intra-Community VAT number.

**18.3** The Supplier undertakes to keep one copy of the invoice.

**18.4** On receipt of the invoice, Sodern shall verify the document within a deadline of thirty (30) days. Any invoice which is not drawn up in accordance with the terms of this Article shall be refused by Sodern and sent back to the Supplier for correction. The payment deadline shall be counted from receipt of the corrected invoice by Sodern, under the terms defined in Article 17 above.

**18.5** Fulfilling the obligations defined in this Article is essential for the execution of the order. In the case of any breach, Sodern shall be able to cancel the order for breach of contract without notice, in accordance with the terms of the article 24.1.

## **19 INTELLECTUAL PROPERTY**

### **19.1 Earlier Rights**

Each Party retains the earlier intellectual property rights generated or acquired independently and/or prior to the date of the signature of the order (hereinafter called the "Earlier Rights").

The Supplier agrees to grant Sodern free licence, irrevocable and non-exclusive, of its Earlier Rights necessary for the use of the Work supplied.

### **19.2 Copyrighted Works**

The Supplier grants exclusively to Sodern, as and when the orders are paid, full copyright on intellectual property on works resulting from the Work which can be protected by copyright (including software and databases) (hereinafter called "Copyrighted Works"). This is granted for the period of legal protection given by copyright throughout the world.

Because of this, Sodern acquires the rights to use, exploit, reproduce, represent, adapt, modify, translate, distribute and market all or part of the Copyrighted Works. Sodern can also grant or licence all or part of these rights to a third party.

### **19.3 Patents**

Sodern shall acquire the ownership of all results arising from the execution of the Work by the Supplier which may be protected by patent rights, particularly inventions (hereinafter called the "Results"), and shall be free to protect them by all title of patent rights.

For this, the Supplier is prohibited from making any application whatsoever for a patent on the Results.

### **19.4 Guarantee against any claim from third parties**

The Supplier guarantees Sodern against any claim from third parties for infringement of intellectual property rights resulting from use by Sodern of the Work and documentation provided by the Supplier and shall be liable for all consequences and financial penalties which could result from this. For the enforcement of this clause, Sodern shall inform the Supplier of the occurrence of such a dispute within the shortest delay. In all cases, the Supplier, at his own cost and by all methods, must allow Sodern to use the Work without infringing the rights of third parties. Where necessary, the Supplier shall obtain from third parties any licence for the use of their rights necessary for the execution of the order and shall pay any corresponding licence fee.

## **20 LIABILITY**

**20.1** In the case of any operation of any type on the Site, the Supplier is liable, under the terms of common law, for all injuries caused by way of execution of the Work to its employees, those of Sodern and those of any third parties.

**20.2** The Supplier shall be liable for all damages caused by him, by his employees, to Sodern, to its employees, to third parties, except in cases of wilful misconduct or gross negligence by Sodern.

**20.3** The Supplier is liable, under the terms of common law, for any damages caused by way of execution of the order, to the Work and goods belonging to Sodern and/or third parties

**20.4** The Supplier, as a producer of electrical and electronic equipment waste, is responsible for organising and financing collection of this waste, as well as its processing and recycling in accordance with the terms of Articles 21 and 22 of Decree 2005-829 of 20 July 2005.

**20.5** Both Parties mutually waive the right to claim compensation from each other for any consequential damage, such as loss of production, interest, or economic and financial loss, without restriction.

## **21 INSURANCE**

**21.1** The Supplier undertakes to take out and keep valid an insurance policy to cover the financial consequences related to his civil liability (contractual and in tort liability), in all cases where this could be incurred during the execution of the order, due to damages of whatever nature (physical, material and consequential), caused to Sodern, and/or its customers and/or any third party, from the fact of executing the Work.

**21.2** The Supplier must produce, at the request of Sodern, a certificate from his insurance company detailing all information relating to the liability covered, payment of premiums and the amount of the cover.

## **22 FORCE MAJEURE**

**22.1** The Party affected by a force majeure event must notify the other Party in writing within a deadline of eight (8) working days, describing in detail the event which has occurred and providing all evidence and all elements concerning this event, allowing its impact on the execution of contractual obligations to be fully understood.

**22.2** The force majeure event has the effect of suspending the execution of the obligation which has become impossible during the duration of the event. Neither Party shall be liable to compensation as a result of this event. Contractual deadlines are extended for the period of the duration of the force majeure event.

If the suspension period exceeds one (1) month, the Parties shall be able to cancel the order in accordance with article 24.2, unless both Parties agree otherwise.

## **23 SUSPENSION OF THE WORK**

Sodern reserves the right to request in writing the total or partial suspension of the execution of the Work for a given period. On receipt of the suspension notification, the Supplier shall cease execution of the Work under the order. The Supplier must make known the possible consequences of the suspension, in particular, regarding deadlines, costs and quality.

At the expiry of the suspension period, Sodern shall notify the Supplier:

- the restart of the execution of the Work or;
- the extension of the suspension or;
- the cancellation of the order without penalty in accordance with Article 24.2 below.

## **24 CANCELLATION**

### **24.1 Cancellation for breach of contract**

In the case of the Supplier failing in one of his obligations scheduled as part of this order, Sodern shall be able to cancel all or part of the order due to a breach of contract, if the Supplier has not rectified this within the thirty (30) calendar days following receipt of a formal notice from Sodern, sent by registered letter, without prejudice for any damages and interest which could be claimed from him by Sodern.

In the case of such a breach of contract by the Supplier as detailed above, Sodern has the right to substitute itself or a third party in place of the Supplier to carry out all or part of the Work not accepted, and this at the Supplier' costs. For this, the Supplier undertakes to grant to Sodern and/or any substituted third party all intellectual property rights of which he is the holder, and which are necessary to continue the execution of the Work.

### **24.2 Cancellation with no breach of contract**

Sodern can decide to cancel all or part of the order by registered letter at any time with no breach of contract by the Supplier, by giving notice of thirty (30) calendar days.

In the case of such a cancellation, and unless specified otherwise in the order, Sodern undertakes to pay to the Supplier:

- the contractual value of the Work delivered and accepted up to the day of the notification of the cancellation,
- at a fair and reasonable price, the Work currently under manufacture and/or the Specific Equipment used for such manufacture, except those that the Supplier wants to retain, in agreement with Sodern.

In no case can the Supplier receive, by way of a deduction for the cancellation, a sum exceeding the expenses justified as part of contractual delivery schedule, and an amount higher than that which would have been due to him if the order had been completed.

### **24.3 Closing down operations**

On receipt of the cancellation notification, the Supplier ceases all execution of the Work at his sites, as well as at those of his subcontractors and suppliers.

The Supplier undertakes to provide Sodern with a progress report of the Work along with any documentary evidence, including the expenditure incurred by the Supplier up to the cancellation date, as well as sums paid by Sodern.

The Supplier, at his own costs and risks, undertakes to return to Sodern, at its site, all of the Specific Equipment and other goods made available to him by Sodern or its customers

### **25 NON-TRANSFERABILITY**

Sodern has concluded this order intuitu personae. As a result, any full or partial cession or transfer of the rights and obligations resulting from the order is prohibited without the prior written agreement of Sodern.

### **26 CORRESPONDENCE**

Any correspondence shall be addressed to Sodern's Procurement Department, to the Sodern representative named on the order. Invoices and similar documents shall be addressed to the Sodern's Accounts Department.

### **27 CHANGES TO THE SUPPLIER'S LEGAL SITUATION**

**27.1** The Supplier undertakes to inform Sodern immediately by registered letter of any bankruptcy or compulsory liquidation proceedings.

**27.2** In the case of any change to the make up of the Supplier's direct or indirect share capital, the Supplier shall inform Sodern in writing of this, within the shortest delay. In the case of such a change, Sodern shall also be able to cancel the order with no breach of contract, in accordance with Article 24.

### **28 COMPLIANCE WITH EMPLOYMENT REGULATIONS**

**28.1** The Supplier undertakes to comply with the legal and regulatory obligations applicable to the order in particular with the terms of the French employment regulations relating to illegal working.

**28.2** The Supplier is obliged, from the date the order comes into force, and every six (6) months during its execution, to send to Sodern all the documents referred to in articles R 324-4 and R324-7 of the French Employment Law.

**28.3** The Supplier is obliged to comply with the legal and regulatory obligations relating to protecting the health and safety of the workforce, and working conditions.

### **29 LANGUAGE**

In the event of any conflict between the French version of these Conditions of Purchase and any other versions in any other languages, the French version shall take precedence.

### **30 SEVERABILITY**

The invalidity of one or more terms of these Conditions of Purchase does not affect its other terms. The Parties undertake to negotiate in good faith replacement terms which better meet the objectives of the terms made invalid.

### **31 WAIVER**

Any failure by either Party in exercising any right whatsoever under the terms of these Conditions of Purchase cannot subsequently be considered as a waiver of any such right.



# CONDITIONS OF PURCHASE

DAF/CT/PC/EF-336  
January 1st, 2009

## 32 APPLICABLE LAW – RESOLVING DISPUTES

These Conditions of Purchase and the order are regulated under French law.

In the case of disputes relating to these Conditions of Purchase and/or the order, the Parties shall do as much as possible to resolve the dispute amicably. If there is no amicable agreement with a deadline of two (2) months from the notification of a dispute by registered letter, the dispute shall be referred to the Courts of Paris on request of the more diligent Party.