

GENERAL TERMS AND CONDITIONS OF SALE ("GTC")

1. SCOPE

1.1. These General Terms and Conditions of Sale ("GTC") govern all contracts and related relationships (such as submissions of offers and orders, contract negotiations etc.) between Swissphone Wireless AG ("Swissphone") and the customer ("Customer") with regard to the sale of hardware ("Hardware"), the licensing of software ("Software") (Hardware and Software together "Products") and the provision of related services ("Services") by Swissphone to Customer. The GTC form an integral part of any agreements concluded between Swissphone and Customer.

1.2. By placing an order for Products or Services of Swissphone, the Customer restates, accepts, agrees and acknowledges that the sale of such Hardware, the licensing of such Software Products and the provision of such Services are subject to these GTC.

1.3. The GTC constitute the entire agreement between the Customer and Swissphone regarding the contractual terms applying to the sale of Hardware, the licensing of Software and the provision of Services and supersede all previous communications and understandings of Swissphone and the Customer. Swissphone shall not be bound by any other statements relating to the Products or Services, unless such statements are made in writing, expressly declared as being of binding contractual nature, and signed by the duly authorized representatives of Swissphone. In the event of any conflict, the provisions of the GTC shall prevail.

1.4. General terms and conditions and other contractual documents of the Customer are expressly waived and excluded. This waiver and exclusion shall apply even if general terms and conditions or other contractual documents of Customer were incorporated into an order of Customer, or otherwise referenced or notified to Swissphone.

2. OFFERS, ACCEPTANCE AND COMING INTO FORCE OF CONTRACTS

2.1. Swissphone's offers, pricelists, product descriptions, datasheets, handouts and technical documentations are not binding and may be modified or revoked at any time.

2.2. Any contract with Swissphone enters into force only upon acceptance by Swissphone. Customer's orders are deemed to be offers for the conclusion of a contract. Swissphone expresses its acceptance of an order either by issuance of an order confirmation or by execution of an order.

2.3. Swissphone's order confirmations include a detailed description of the Products and of the Services. If no order confirmation is issued, the description may derive from an offer of Swissphone or from the order of the Customer. Swissphone reserves the right to make improvements, substitutions or modifications to any part of the Products prior to delivery.

3. HARDWARE DELIVERIES

3.1. Hardware is delivered EXW/Swissphone, Samstagern, Incoterms 2000.

The risk of loss and damage passes to Customer upon Swissphone's dispatch of the Hardware to a carrier for shipment to Customer. The Customer shall be responsible for lodging any claims with the carrier. Unless Swissphone receives other instructions from the Customer, Swissphone will select the method of shipment and will package the Hardware in accordance with Swissphone's standard practices.

3.2. Delivery and shipping dates are estimates only and approximate. Swissphone shall not be in default nor be liable to Customer or any other party for any damage, loss or expenses incurred as a result of delayed delivery or non-delivery of Hardware. A delay shall not entitle Customer to any cancellation, rescission or modification of a contract.

3.3. The Customer shall inspect all deliveries on completeness and conformity. A delivery shall be deemed to be accepted unless Customer notifies Swissphone in writing to the contrary within seven days upon receipt. If a delivery is proven to be incomplete or non-conforming, Swissphone will re-perform the delivery to such extent as required to achieve a proper delivery.

4. SOFTWARE LICENSES

4.1. Any license granted by Swissphone relates only to the machine-readable object-code version of the Software, the published user manuals and documentation that are made available for the Software, and updates or revisions, if any, of the Software, that the Customer may receive from Swissphone.

4.2. Swissphone grants licenses only upon payment of the applicable license fee. Swissphone's licenses are non-exclusive and non-transferable licenses (without right to sub-license) to use the Software for Customer's own and internal business purposes for a predefined number of servers and/or users or for other sets of usage parameters.

4.3. Customer may not copy, transfer, distribute, rent, lease or sublicense all or any portion of the Software to any third party; nor translate, modify, adapt, decompile, disassemble, or reverse engineer the Software in whole or in part; nor modify or prepare derivative works of the Software.

4.4. All proprietary rights in the Software are and stay with Swissphone and remain reserved, and all license rights that are not expressly granted remain reserved.

4.5. Swissphone delivers to the Customer one copy of the Software on a physical media or by electronic transmission and one copy of the related documentation on CD-ROM, or by electronic transmission. Customer may make such copies of the Software as reasonably necessary to back-up the Software. All copies of the Software shall be the property of Swissphone.

5. PRICES

5.1. Prices are quoted in CHF, EUR or USD.

5.2. Prices are ex works (EXW) and net. Additional or incidental costs and charges, such as for freight and insurance, and ex-

port, transit and import levies, fees, duties, customs and taxes, and licensing and certification fees, are excluded and shall be borne and paid by Customer

5.3. Prices are exclusive of value added, sales, use, excise and other applicable taxes, charges, duties or fees, which will be invoiced separately to and shall be paid by Customer.

5.4. Swissphone may adjust agreed prices in case of substantial price increases of, or the need to procure substitutes for, components of other manufactures included in the Products.

6. PAYMENT AND PAYMENT TERMS

6.1. The Products are to be paid in advance or upon dispatch for delivery. In case of successive or repeated deliveries (more than one delivery under a contract), payment is to be made per delivery. Services are to be paid in advance or upon provision.

6.2. Invoices for payments that are not to be made in advance or upon dispatch for delivery are payable within thirty days from the date of invoice.

6.3. Invoices are payable net and without any deductions. Payments are deemed to have been made when the invoice amount is credited to Swissphone's bank account. Customer shall in no case be entitled to withhold any payments, including in cases of delayed, incomplete or non-conforming deliveries or of alleged warranty claims.

6.4. Interest of 4% p.a. above the then applicable 3-month LIBOR of the applicable currency shall accrue and become payable on all amounts not paid within the payment period, without any further reminder by Swissphone being required.

6.5. In case of Customer's payments being delayed or at risk, Swissphone may withhold and suspend any (further) deliveries under the affected or any other contract with Customer, or rescind all or parts of the affected or any other contract with Customer, and claim damages.

7. RESERVATION OF TITLE

7.1. Title to the Products shall not pass to Customer, but shall be retained by Swissphone, until full payment has been received by Swissphone. Customer shall cooperate in any measures necessary for the protection of Swissphone's title. In particular, Customer authorizes Swissphone to notify and register the reservation of title in public registers, books or records.

8. NO PRODUCT WARRANTIES

8.1. All Products are delivered, sold and/or licensed "as is", and under exclusion of any representations and warranties of any kind or nature, express or implied. Swissphone excludes and disclaims all express and implied warranties for the Products, including, without limitation, any warranties as to accuracy, satisfactory quality, functionality, performance, durability, of merchantability and fitness for a particular purpose.

8.2. To such extent as representations and warranties cannot be excluded by operation of mandatory law, Swissphone's obligations for breach of warranty shall be limited to, at Swissphone's option, refund the purchase price or license fee of, or repair or replace, at Swissphone's expense, all such Products which are proven to be non-conforming or defective.

9. SERVICES

9.1. Swissphone performs the Services in a professional and workmanlike manner and with qualified personnel. Swissphone does not assume any obligation to deliver particular results or deliverables when providing Services and expressly disclaims all warranties, if any, for the provision of Services.

10. EXCLUSION OF LIABILITY

10.1. Any liability of Swissphone for loss or damage is excluded to the broadest extent permitted by law.

10.2. Swissphone expressly excludes in particular but without limitation (i) any liability for damage caused by slight negligence or accident, and (ii) any liability for direct, actual, incidental, indirect or consequential damage, for loss of profit or anticipated savings, for loss of data, for additional expenses or claims put forward by third parties, for business interruption, for loss of goodwill, and for delay damage, and (iii) any liability for acts and omissions of its auxiliaries, all whether in an action in contract or tort.

10.3. The above exclusion of liability does not apply if Swissphone causes damage deliberately or with gross negligence.

11. THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

11.1. Title to and ownership of any intellectual property rights in the Products and Services, including all patents, copyrights and other intellectual property rights relating thereto, shall at all times remain solely and exclusively with Swissphone. Customer acknowledges that Swissphone has proprietary interests in the Products.

11.2. Swissphone confirms that to its best knowledge and belief, there are no rights of third parties that could be infringed by the Products. Swissphone, however, cannot and does not warrant that the Products do not infringe rights of third parties.

12. REGULATIONS

12.1. It is the sole responsibility of Customer to assure that the Products comply with the applicable regulations and standards relating to the importation, design and operation of the Products, if any, in the country of destination. Swissphone will provide Customer upon request the related pertinent information on the Products and copies of certificates obtained by Swissphone for the Products.

12.2. When Products are connected to a public network, certain telecommunication regulations may apply. It is the sole respon-

sibility of Customer to ensure compliance with such regulations.

12.3. The export of the Products may be subject to export restrictions imposed by the Division for Import and Export of the Swiss Federal Department of Economic Affairs or by corresponding foreign authorities. The Customer shall not export or re-export Products or systems incorporating Products without first having obtained all such written consents or authorizations as may be required by any applicable government regulations.

13. CONFIDENTIALITY

13.1. Swissphone and the Customer agree that certain information supplied by each to the other may be proprietary or confidential. All such information shall be clearly marked "confidential", shall be held in confidence by the receiving party and shall be used only for the purpose of the contractual relationship.

14. APPLICABLE LAW AND PLACE OF JURISDICTION

14.1. These GTC and all contracts and related relationships (such as submissions of offers and orders, contract negotiations etc.) between Swissphone and Customer shall be governed by and construed in accordance with Swiss law, under exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

14.2. Place of performance shall be Samstagern or another place designated by Swissphone. Exclusive place of jurisdiction shall be Zurich/Switzerland.

15. MISCELLANEOUS

15.1. In the event that Swissphone cannot perform or fulfill its obligations in whole or part for any reason beyond its reasonable control, Swissphone may at its discretion withdraw from all or parts of the affected contract(s) with Customer. Swissphone shall not be liable for any loss or damage arising from its failure to perform its obligations for any reason whatsoever beyond its reasonable control.

15.2. Customer shall not be entitled to assign rights and obligations under a contract with Swissphone to any third party without the prior written consent of Swissphone.

15.3. The invalidity of any part of these GTC shall not affect the validity of the remainder. Instead of any provisions that are invalid or null and void, provisions shall apply which correspond as close as possible to the intentions as expressed herein.

15.4. Textual declarations that are transferred or recorded via electronic means (telefax, e-mail, Internet and similar) shall be deemed as declarations in writing. The burden of proof that the recipient took notice of such declarations shall be with the sender. Such declarations shall be deemed to be received by the recipient upon the recipient having taken notice thereof.