

1. Scope of application of the general conditions

These General Conditions of Purchase (hereafter GCP) shall apply to the following companies of the Swissphone Group:

Swissphone Holding AG (CH-130.0.010.480-7),

Swissphone Wireless AG (CH-035.3.021.296-5).

The GCP shall regulate all legal relationships of the parties with respect to the purchase of products, goods or services (hereafter products/services) by companies of the Swissphone Group (the respective purchasing company hereafter Swissphone) from vendors (hereafter vendor) and shall form an integral part of all contracts concluded between Swissphone and the vendor, unless otherwise expressly agreed. This shall apply regardless of whether the relationship of the parties is on a one-time basis, or on an ongoing or a recurring basis. Where the relationship is on an ongoing or recurring basis, the GCP shall also apply as a framework contract between the parties. Terms deviating from the provisions of the GCP shall only be legally binding where they have been expressly accepted in writing by Swissphone.

With the making of an offer to Swissphone or the receipt of a purchase order or a call from Swissphone, the vendor shall be deemed to have accepted the GCP and their binding effect.

The vendor's general terms and conditions and other contractual documents shall be waived and excluded. This waiver and exclusion shall apply and the vendor's terms and conditions shall be inapplicable even where such terms and conditions are referred to in the vendor's offers or other documents and where Swissphone, relying thereupon, issues a purchase order, accepts products/services or makes payment.

2. Requests for tender and offers of the supplier

Communications from Swissphone addressed to the vendor as request shall denote a request for information and documents or an invitation to the vendor to tender.

Unless otherwise indicated, offers made to Swissphone shall generally be free of charge. Terms of an offer that deviate from an invitation to tender or from the GCP shall be expressly indicated in the offer.

Offers shall be binding during the time period fixed in an invitation to tender or, failing such invitation, in an offer. Where no time period is fixed, an offer directed to Swissphone shall be binding for a period of three months from the date of its issue.

3. Acceptance of offers and ordering process

Purchase orders (including purchase orders in acceptance of offers) of Swissphone are only binding and valid if carried out via standard forms (entitled purchase order). The forms will be communicated via post, telefax or via electronic means.

Swissphone calls for deliveries under blanket or framework orders, for deliveries of products/services offered for a definite period as well as for instalments by means of a generated call.

Swissphone assigns a reference number to each order or call of products/services. These reference numbers shall be adopted by the vendor and be quoted with all deliveries and in all correspondences.

The vendor shall confirm the receipt of a purchase order or a call to Swissphone within a period of five days.

Deviations from a purchase order or call as well as additions by the vendor contained in the confirmation, are only binding upon Swissphone if subsequently approved expressly and in writing by Swissphone.

4. Passing of title and risk

The title in the subject matter of delivery shall pass to Swissphone at the handing-over to Swissphone or to a third party designated by Swissphone as recipient. The vendor shall bear the risk of deterioration and destruction until the passing of title.

5. Due dates

All due dates shall be deadlines. The vendor shall be automatically in delay and default where due dates are exceeded, without the need of an additional reminder or demand. In case of delay, the statutory rules shall apply. In addition, Swissphone shall have the right to levy liquidated damages in the amount of 0.5% of the contract value for every started calendar week of delay, up to a maximum of 5% of the contract value. The payment of the liquidated damages shall not discharge the vendor from the duty to fulfil its contractual obligations. The vendor shall also compensate Swissphone for damages in excess of the liquidated damages unless the vendor can demonstrate that it was not at fault.

Relevant moment in time for a due date being met shall be the receipt or the acceptance by Swissphone of products/services that are in accordance with the terms of the contract.

6. Delivery, transportation and insurance

Deliveries shall be to the address at the place of performance as designated by Swissphone or to another address designated by Swissphone as the destination. Means of transportation possibly prescribed shall be observed.

The vendor shall insure the goods until the moment of their handing-over at the place of performance or destination. The vendor shall be liable for damages in transit resulting from insufficient or unsuitable packaging. This shall also apply to damages in transit which occur during further transportation to a distributor or end-customer.

7. Prices

All prices shall be fix and binding. Price adjustments shall be excluded. The vendor shall provide its products/services for fixed prices. The price shall cover all performance that is necessary for the fulfilment of the contractual obligations.

Except where otherwise expressly agreed, the price shall include the costs of packaging, shipment, transportation, insurance, unloading as well as expenses, tariffs and other public charges. The value added tax shall be deemed included in the price insofar as the price is not expressed as net price or as price exd. VAT.

8. Payment terms and invoicing

The payment period shall run starting from the receipt or the acceptance by Swissphone of products/services that are in accordance with the terms of the contract and a following proper and verifiable invoicing. The payment of an invoice shall be either within twenty days with 3% discount, or within thirty days without discount. Swissphone shall be entitled to withhold corresponding payments in the event of late delivery of required documents or where invoices are not issued or addressed as requested by Swissphone.

In the exceptional event that an advance payment is agreed, the vendor shall provide at the request of Swissphone a suitable bank guarantee, insurance bond or other security for the advance payment. Where due dates are exceeded, Swissphone may deduct the forfeited liquidated damages from the invoiced amounts. Swissphone generally reserves the right to settling-off the vendor's claims with counterclaims of Swissphone or other members of the Swissphone Group.

The vendor may not assign to a third party claims against Swissphone without having first obtained the consent of Swissphone. This consent shall not be unreasonably withheld.

Invoices shall be issued in conformity with value added tax requirements and shall be made out to the Invoice Receipt Department of Swissphone.

Invoices shall include the following information: Swissphone reference number, origin of any of the goods, delivery address, IBAN-number of the account to which the payment shall be made.

9. Warranty

The vendor shall provide its products/services to Swissphone free from physical and legal defects. The vendor represents and warrants that its products/services are of satisfactory quality and fitness for the agreed and the presupposed purpose, as well as for the purpose as disclosed to the vendor.

In addition, the vendor represents and warrants that its products/services comply with the applicable relevant laws and standards on product safety and environmental protection. The vendor shall deliver to Swissphone the corresponding conformity statements and other documentation. In relation to technical work equipment, the vendor represents and warrants that these are in line with the generally accepted rules of technology and that these conform with work protection and accident prevention regulations and that they are equipped with the required safety devices.

The warranty shall be for a period of two years. This period shall commence upon the receipt or the acceptance by Swissphone of products/services that are in accordance with the terms of the contract.

Swissphone shall be entitled to notify defects throughout this entire period, regardless of when the defect was discovered or could have been discovered. Swissphone shall not be bound to – completely or merely randomly – inspect products/services for defects upon receipt.

In the case of breach of warranty, Swissphone shall have the right to firstly demand re-performance by way of repair or replacement. Should the re-performance fail, Swissphone shall have, at its discretion, the right to declare rescission of the contract (withdrawal) or to demand reduction of the price and/or to demand damages. Swissphone may exercise its rights for the entire purchase or with respect to a certain part of it only.

In the event of re-performance, the two-year warranty period shall start to run anew. The vendor shall be liable for all damages arising out of or in connection with a defect (consequential damages). Swissphone shall have full recourse against the vendor and the vendor shall compensate all expenses and damages of Swissphone in relation to distributors' or end-customers' warranty claims against Swissphone for defects that are attributable to defects of vendor's products/services. This shall apply beyond the above warranty period as well for whole the duration of Swissphone's warranty vis-à-vis distributors or end-customers.

10. Product liability and safety

The vendor shall, without limitation in time, indemnify and hold Swissphone fully harmless of all third party claims and for all suffered damages and incurred expenses arising from product liability or product safety obligations related to the products/services of the vendor. Swissphone shall without delay inform the vendor of such claims.

The vendor shall take out for the entire period of supply to Swissphone, a product liability, product safety and business liability insurance adequately covering possible risks of liability as well as the costs of indemnity of Swissphone. The insurance shall be valid worldwide and include as well installation and dismantling costs. The insurance coverage shall be evidenced at the request of Swissphone.

11. Third party rights

The vendor shall, without limitation in time, indemnify and hold Swissphone fully harmless of all third party claims and for all suffered damages and incurred expenses arising from the breach of, through the products/services of the vendor, third party intellectual property rights such as patents, copyrights, trademarks or similar rights.

Swissphone shall without delay inform the vendor of such claims. At the request of Swissphone, the vendor shall join legal proceedings against Swissphone or conduct them in place of Swissphone. The vendor shall in all cases assume the costs and compensations associated with the proceedings.

12. Intellectual property rights

The rights in all documents, including drawings, sketches, computations etc., which are handed over by the vendor, shall remain with Swissphone. The vendor shall use such documents and all further information of Swissphone exclusively for the purpose of providing products/services to Swissphone. Unless having obtained the prior written consent of Swissphone, the vendor shall not be entitled to rely on such documents or information for the provision of products/services to a third party, nor to copy or reproduce such documents or information or in any manner, nor disclose such documents or information to third parties.

All rights, particularly including copyrights and rights to inventions, in work results that are created within the provision of products/services to Swissphone shall vest in Swissphone and the vendor herewith assigns and transfers such rights to Swissphone.

13. Supplied materials and documents

Materials, parts, containers, special packaging, tools, measurement equipment or similar goods supplied by or paid for by Swissphone shall be in and remain the ownership of Swissphone. They shall be carefully stored and maintained and shall be insured against all damages. They shall not be changed, destroyed or used for a third party without the prior written consent of Swissphone. The supplier shall at the request of Swissphone return or destroy them without delay. The vendor shall not be entitled, on whatever ground, to a right of retention. The complete return or destruction shall be confirmed in writing.

14. Confidentiality

The vendor shall keep confidential all know-how, business-specific aspects, documentations and information communicated to it by Swissphone or made known to it in any other way. The vendor shall use such information exclusively for the purpose of providing products/services to Swissphone.

The vendor shall impose this duty of confidentiality to its employees and to third parties retained by it. Swissphone reserves the right to demand a special confidentiality declaration where third parties provide products/services on the premises of Swissphone.

The duty of confidentiality shall not apply to information, which the vendor legitimately and without a duty of confidentiality knew prior to receipt from Swissphone, or which becomes thereafter known without a duty of confidentiality, and information which – without breach by either of the parties – is or becomes generally known, or information for which the use for other purposes has been approved in writing.

15. Data protection

Swissphone shall be entitled to process personal data within or for purposes of the contractual relationship. The vendor further agrees and acknowledges that Swissphone maintains a supplier database for the purpose of executing and fostering its business relationships and that Swissphone may transfer or communicate the related data to third parties in Switzerland and abroad; or entrust third parties with the processing of such data. Swissphone shall care through appropriate measures for the protection of such data.

16. Publications

The vendor may mention Swissphone in its publications only after having obtained the written consent of Swissphone therefore.

17. Applicable law, place of performance and jurisdiction

The contractual relationship between Swissphone and the vendor shall be governed by Swiss law. The provisions of the Vienna Sales Law (The United Nations Convention on Contracts on the International Sale of Goods, concluded in Vienna on April 11, 1980) shall not apply.

The place of performance shall be the place of the registered offices of Swissphone or another place expressly designated by Swissphone as the place of performance.

Exclusive place of jurisdiction shall be Zurich. This is, however, without prejudice to the right of Swissphone to initiate proceedings at the vendor's domicile.