

## STANDARD TERMS AND CONDITIONS FOR PURCHASE AND SUPPLY OF GOODS AND SERVICES

These are the terms and conditions (“T&Cs”) under which *EA MÉXICO, S. de R.L. de C.V.*, a company registered under the laws of United States of Mexico as shown in the public deed number 35,442 dated 5 December 2005 granted before the Public Notary Lic. Eric Namur Campesino, owner of the Public Notary office number 94 of the Federal District, with offices for all legal effects at Juan Salvador Agraz 65, 10th Floor, Col. El Molinito, Delegacion Cuajilmapa, 05310, Mexico City, Mexico, its divisions and affiliates (collectively “EA”), offers to purchase goods and/or the provision of services from you (the “Seller”), and these T&Cs become a binding contract when accepted by Seller’s commencement of performance.

### 1. DEFINITIONS

In these T&Cs, unless the context otherwise requires, the following expressions have the following meanings:

“*Assets*” means any materials in any form supplied by EA from time to time to the Seller;

“*Authorized Representative*” means the person or persons designated by EA whose identity is notified to the Seller from time to time in writing and who is authorized to make the decisions and representations of EA in connection with the Goods;

“*Incoterms 2000*” means the international rules for the interpretation of trade terms of the International Chamber of Commerce 2000;

“*Contract*” means these T&Cs, the PO, the documents listed herein and the Seller’s acceptance of the PO;

“*Delivery*” means the delivery of goods and / or the provision of services as the case may be;

“*Goods*” means any goods or services described in the Contract to be bought by EA from the Seller (or supplied by the Seller to EA including any part or parts of them);

“*IPRs*” means all current and future copyright, patents, trademarks or rights in databases, inventions or trade secrets, know-how, rights in designs, topographies, trade and business names, domain names, marks, service marks and devices (whether registered or not) and all other intellectual property rights and applications for any of those rights (where such applications can be made) capable of protection in any relevant country of the world;

“*Materials*” means any and all materials (including without limitation any software, user guides, works, materials and items) conceived, prepared, created or designed by the Seller, or commissioned by the Seller from third parties pursuant to the Contract or arising out of or in consequence of the provision of the Goods;

“*Moral Rights*” means the moral rights under the applicable law of the author of a copyright work (as distinguished from rights of ownership), which allows an author; a) the right to be identified as the author of the work; b) the right to object to derogatory treatment of the work; c) the right not to have the work falsely attributed; and/or d) to assert any other similar rights under any applicable law;

“*PO*” means EA’s purchase order, which is a written instruction to supply the Goods, incorporating and governed by these T&Cs;

“*Working Days*” means the days on which a particular office or premises is open for business.

### 2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.4, these T&Cs are the only conditions upon which EA is prepared to deal with the Seller and they govern the Contract to the entire exclusion of all other terms and conditions.

2.2 Each PO by EA for Goods from the Seller shall be deemed to be an offer by EA to buy or obtain Goods subject to these T&Cs and no PO shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the PO, in whole or in part accepts the offer.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Seller’s quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms or conditions.

2.4 These T&Cs apply to all EA's purchases and any variation to these T&Cs or any PO shall have no effect unless expressly agreed in writing and signed by an Authorized Representative of EA.

### **3. QUALITY AND DEFECTS**

3.1 The Seller shall ensure that the Goods shall conform in all respects with the PO and specification and/or sample supplied or advised by EA to the Seller.

3.2 At any time prior to delivery of the Goods to EA, EA or persons authorized by EA, the Seller shall grant to EA the right to inspect and test the Goods.

3.3 If the results of such inspection or testing cause EA to be of the opinion that the Goods do not conform or are unlikely to conform with the PO or to any specifications and/or samples supplied or advised by EA to the Seller, EA shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition EA shall have the right to require and witness further testing and inspection.

3.4 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.

3.5 If any of the Goods fail to comply with the provisions set out in this condition 3 EA shall be entitled to avail itself of any one or more remedies listed in condition 14.

### **4. DELIVERY**

4.1 Unless EA otherwise instructs, Seller shall, at no additional cost to EA, mark all Goods with appropriate handling and delivery instructions and with appropriate identification information in a conspicuous and readily accessible location.

4.2 The Goods shall be delivered carriage and insurance paid (DDP Incoterms 2000), to EA's place of business or to such other place of delivery as is agreed by EA in writing prior to delivery of the Goods. The Seller shall off-load the Goods at its own risk as directed by EA.

4.3 The date for delivery shall be specified in the PO. Seller will complete the delivery in strict conformance with the specifications and dates set out in the applicable PO and the Seller agrees that time for delivery shall be of the essence.

4.4 The Seller shall give EA immediate notice of any potential delay in delivery.

4.5 Unless otherwise stipulated by EA in the PO, deliveries shall only be accepted by EA in normal business hours.

4.6 If the Seller requires EA to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to EA and any such packaging material shall only be returned to the Seller at the cost of the Seller.

4.7 If the Goods are delivered to EA in excess of the quantities ordered EA shall not be bound to pay for the excess and any excess shall be and remain at the Seller's risk and shall be returnable at the Seller's expense.

4.8 EA shall not be deemed to have accepted the Goods until it has had seven (7) days to inspect them following delivery. EA shall also have the right to reject the Goods as though they had not been accepted for thirty (30) days after any latent defect in the Goods has become apparent.

4.9 EA's final inspection as set out in condition 4.8 shall not preclude later claims by EA based on latent defects, fraud, gross mistakes, or Seller's warranties, as set out in condition 10.

### **5. TITLE / RISK**

5.1 The Goods shall remain at the risk of the Seller until delivery to EA and acceptance of the Goods by EA is complete (including off-loading and stacking).

5.2 Title in the Goods or any part thereof shall pass to EA on their being delivered and accepted by EA.

## **6. PRICE AND PAYMENT**

6.1 The price of the Goods shall be stated in the PO and unless otherwise agreed in writing by EA shall be exclusive of value added tax but inclusive of all other charges, including applicable taxes, shipping charges, preparation for delivery charges and any other miscellaneous charges.

6.2 Seller warrants that any unit prices do not exceed the unit prices charged by Seller to other customers for similar quantities and delivery requirements.

6.3 EA shall pay the price of satisfactory Goods after delivery of the Goods to EA and following receipt of a valid, undisputed invoice addressed to EA. For the avoidance of doubt, where the Goods are supplied in instalments, the payment shall be made by EA to the Seller in full after all the instalments have been delivered.

6.4 All payments will be made within 45 days end of month of the date of the Seller's valid invoice.

6.5 Seller shall render invoices promptly after delivery of the Goods, with each invoice including any applicable documents evidencing shipment (e.g. Bill of lading or freight bill), PO number, EA product number (where applicable), description of Goods, quantities, unit prices, extended total costs, and other information relevant to the purchase of the Goods.

6.6 Each PO shall be invoiced separately.

6.7 The Seller acknowledges and agrees that payment of the invoice is in full and final settlement of all sums due to the Seller for the Goods delivered.

6.8 Without prejudice to any other right or remedy, EA reserves the right to set off any amount owing at any time from the Seller to EA against any amount payable by EA to the Seller under the Contract.

6.9 If any sum under the Contract is not paid when due then, and at the condition it has not been subject to contestation, without prejudice to the parties other rights under the Contract, that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at the Mexican legal interest rate from time to time. The Seller is not entitled to suspend deliveries of the Goods as a result of any sums being outstanding.

6.10 Payment by EA of an invoice shall not constitute acceptance of Goods and shall be subject to adjustment for errors, shortages, defects in goods, or other failures of Seller to comply with the terms of the relevant PO.

## **7. CONFIDENTIALITY**

7.1 The Seller shall keep in strict confidence all information which has been disclosed to the Seller by EA or its agents and any other information concerning EA's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to EA and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.

7.2 Seller agrees that in the event of a breach of this section, EA shall be entitled to seek specific performance and injunctive relief as a remedy for any such breach. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages.

## **8. EA's INTELLECTUAL PROPERTY RIGHTS**

8.1 All IPRs or any other forms of property supplied by EA to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods shall at all times be and remain the property of EA. The Seller shall hold all such IPRs and other forms of property in safe custody at its own risk and maintain and keep in good condition until returned to EA, and shall not be disposed of other than in accordance with EA's written instructions, nor shall such items be used otherwise than as authorized by EA in writing.

8.2 The parties agree that EA provides no licenses or rights under any EA IPRs whether registered or unregistered.

8.3 To the extent that the Seller creates any IPRs in the Materials in the course of the provision of Goods, the Seller irrevocably, unconditionally, perpetually (or for the maximum period of time allowed by Mexican laws) and worldwide, assigns to and, in the case of Moral Rights, including, but not limited to, all rights to be identified as the author of the IPRs and all approbation, restriction and limitation rights on the use or modifications of the IPRs, waives in favor of EA, and shall procure that its officers, employees, agents and contractors assign to and waive in favor of EA, all right, title and interest in and to the Materials, without any additional counterpart from EA.

8.4 Should the Seller be required to use any of EA's Assets in the provision of the Goods, the Seller agrees to comply with any additional obligations that EA may impose in relation to the use of such Assets.

8.5 Any use of the Goods by or on behalf of the Seller shall be subject to EA's prior written approval.

## **9. DATA PROTECTION**

The Seller shall ensure that it shall at all times comply with the data protection and privacy provisions and obligations imposed by the applicable rules and legislation in each jurisdiction in which the parties operate, together with any subsequent re-enactment or amendment, in storing, processing and transferring personal data. The Seller shall indemnify and keep EA indemnified against any liability, damage, costs, expenses (including reasonable legal expenses) or losses arising out of any disclosure, transfer and/or misuse of personal data by the Seller.

## **10. WARRANTY**

10.1 Notwithstanding any inspection or, acceptance of, or payment for Goods purchased under any PO, Seller warrants that:

10.1.1 it will not accept an order request from EA without a valid PO number;

10.1.2 all Goods provided to EA shall be free from defects in design, workmanship, materials and manufacture;

10.1.3 all Goods are of merchantable and satisfactory quality and fit and suitable for the purpose intended by EA;

10.1.4 all Goods strictly conform to the specifications or sample;

10.1.5 spare and/or replacement parts, components and materials for the Goods shall be available from the Seller for a reasonable period of time after delivery of the Goods;

10.1.6 all services will be provided by qualified personnel, performed in a professional manner and with reasonable care and skill, and to EA's satisfaction;

10.1.7 all Goods are and will remain free of any liens and encumbrances of any kind;

10.1.8 all Goods supplied to EA and the use by EA or any other user of the Goods do not infringe the IPRs of any third party, and the Seller shall fully indemnify EA and keep EA fully indemnified against all claims, demands, damages, penalties, costs, expenses or liability arising as a result of the breach of this warranty by the Seller;

10.1.9 it will comply with all applicable laws, statutes, rules, regulations, directives, codes or orders and will obtain any necessary permits for Goods provided;

10.1.10 it will be solely responsible and liable for all acts and omissions of personnel it furnishes to perform work in connection with any PO, and such personnel shall be solely considered employees or agents of Seller and under no circumstances employees or agents of EA; and

10.1.11 it will ensure that any employees or agents of the Seller, who are required to come on to any

EA premises, comply with the security and health and safety regulations, and other policies in force at the premises from time to time and obey the reasonable instructions of EA whilst on the premises.

10.2 The foregoing warranties are in addition to all other warranties, whether express or implied.

10.3 All warranties shall be for the benefit of EA, its affiliates and its customers.

## **11. INDEMNITY**

11.1 The Seller shall indemnify and keep EA and its affiliates, directors, shareholders, agents and employees indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by EA as a result of or in connection with:

11.1.1 defective workmanship, quality or materials;

11.1.2 an infringement or alleged infringement of any IPRs caused by the use, manufacture or supply of the Goods; and

11.1.3 any claim made against EA in respect of any liability, loss, damage, injury, cost or expense sustained by EA's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

## **12. LIABILITY**

12.1 Nothing in these T&Cs excludes or limits the liability of either party:

12.1.1 for death or personal injury caused by the other party's negligence; or

12.1.2 for any matter which it would be illegal to exclude or attempt to exclude liability; or

12.1.3 for fraud or fraudulent misrepresentation.

12.2 Subject to condition 12.1 above, EA's entire liability in contract, tort, (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these T&Cs shall be limited to the PO value.

12.3 OTHER THAN PURSUANT TO CONDITIONS 12.1 AND 12.2 ABOVE, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR ANY OF ITS AFFILIATES FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OR BUSINESS, REVENUE OR OPPORTUNITY ARISING OUT OF THIS CONTRACT EVEN IF APPRAISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING.

## **13. TERMINATION**

13.1 EA shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice, such termination shall have immediate effect and all work on the Contract shall be discontinued and EA shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

13.2 At the end of the Contract the Seller shall deliver to EA upon request all of EA's property (including not limited to Confidential Information, Materials, Assets, documents, and information) relating to the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this condition, EA may recover possession thereof and the Seller grants a licence to EA or its appointed agent to enter (for the purposes of such recovery) any premises of the Seller or its permitted suppliers or sub-contractors where any such items may be held.

## **14. REMEDIES**

14.1 Without prejudice to any other right or remedy which EA may have, if any Goods are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract (including without limitation late delivery) EA shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by EA:

14.1.1 to rescind the PO;

14.1.2 to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a pro-rata refund for the Services so returned shall be paid forthwith by the Seller;

14.1.3 at EA's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;  
14.1.4 to refuse to accept any further deliveries of the Goods but without any liability to the Seller;  
14.1.5 to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and  
14.1.6 to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

## **15. INSURANCE**

The Seller shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Seller, arising out of the Seller's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Seller.

## **16. ASSIGNMENT**

16.1 The Seller shall not be entitled to assign the Contract or any part of it without the prior written consent of EA.  
16.2 EA may assign this Contract or any part of it to any EA entity.

## **17. FORCE MAJEURE**

If either party fails to perform its obligations under the Contract due to causes beyond its reasonable control including but not limited to war, fire, blockade, act of terrorism, strikes (excluding strikes by its own personnel) or natural catastrophe, then that party shall not be held responsible for any loss or damage which may be incurred by the other party as a result of such failure provided that, if the performance by the Seller of its duties is substantially prevented for a continuous period of 30 days or more than 15 separate days in any period of 60 days, EA may, on written notice, terminate this Agreement or any part affected by such cause. Each party will give notice to the other as soon as possible upon becoming aware of an event that may lead to the invocation of this condition 17.

## **18. GENERAL**

18.1 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

18.2 Failure or delay by EA in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by EA of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

18.3 Any notices shall be given in writing either by personal delivery or by certified mail to the address for each party as set out on the PO or as otherwise notified to the other party, and shall be effective upon receipt.

18.4 The Seller shall not publicise (for example by making press statements or by issuing press releases) or release any information in relation to or about these T&Cs except with EA's prior written consent.

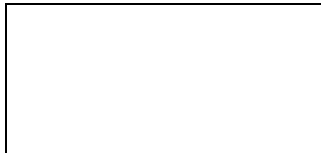
18.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by any person that is not a party to it.

18.6 EA and the Seller are independent contractors, and nothing in these T&Cs will be deemed to place the parties in the relationship of employer / employee, principal / agent, partners or joint ventures.

18.7 These T&Cs constitute the entire agreement between the Seller and EA and supersede all prior oral and written discussions, agreements, and understandings of the parties, if any, with respect hereto. Unless specifically referenced in a PO, none of Seller's terms and conditions, appearing on any acknowledgement, sales order or otherwise, shall apply to goods supplied under these T&Cs, even if agreed in writing by EA and even if EA accepts goods supplied under these terms and conditions.

18.8 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by Mexican law and the parties submit to the exclusive jurisdiction of the courts of Mexico City (Federal District).

**Seller signature (by authorized signatory)**



**Name of Company**

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**Printed name**

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**Title/position**

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**Date**

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