

## General Conditions of Purchase Sécheron (March 15 2005 version)

### 1. General points

- 1.1 The present General Conditions of Purchase (CGA) shall govern all cases that are not the subject of a specific written clause between Sécheron SA ("Sécheron") and the Seller ("Supplier"); they shall apply notwithstanding possible legal obligations existing between them.
- 1.2 The present CGA shall be exclusively binding, the only exception being the expressed written acceptance by Sécheron of other conditions. In no case shall any acceptance of delivery constitute a tacit acceptance of the Supplier's conditions.

### 2. Offer

- 2.1 The offer shall be compiled and submitted to Sécheron at no expense. The Supplier shall moreover submit within reasonable time limits any complementary information that could be requested of him.
- 2.2 The offer shall be drawn up in conformity with the invitation to tender. Any possible difference shall be clearly marked by the Supplier.
- 2.3 Unless otherwise agreed, the offer shall be valid for at least **3 months**.
- 2.4 Insofar as the order has not been placed, Sécheron may withdraw at any time from the negotiations, without any compensation whatsoever.

### 3. Order and Confirmation of Order

- 3.1 The validity of an order shall be subject to an official order signed by Sécheron. Orders, agreements and modifications transmitted verbally shall only be binding upon being confirmed in writing.
- 3.2 Documents annexed to the order such as drawings or other specifications shall form an integral part of the order.
- 3.3 Except by agreement to the contrary, every order must be confirmed in writing within **5 working days**; the confirmation must in all respects be in accordance with the order.
- 3.4 Without written confirmation on the part of the Supplier within the aforementioned time limit, the order shall be considered accepted.
- 3.5 By request, the Supplier shall submit for approval and free of charge the definitive plans that he has established concerning the ordered object before putting it into production. The eventual approval of Sécheron shall not in any way diminish the responsibility of the Supplier.
- 3.6 The Supplier shall himself carry out the order. He may only sub-contract it to a third party with the written agreement of Sécheron.
- 3.7 If the Supplier receives some forecasts on the part of Sécheron, these shall be given for information only, without amounting to an express order from Sécheron.

### 4. Price

- 4.1 The prices indicated shall be fixed. If it has not been possible to negotiate them beforehand, especially in case of emergency, the Supplier will have to align his prices with those in the sector.
- 4.2 Prices shall include packaging, transport and all accessory expenses (**DDP & Insurance** conditions according to Incoterms 2000).

### 5. Transport, insurance and packaging

- 5.1 The Supplier shall insure the merchandise up to the place of delivery.
- 5.2 The Supplier shall be responsible for the suitability of the packaging in relation to the product delivered, means of transport employed and the current legislation on packaging and environment up to the place of delivery. He must, if necessary, indicate the procedure to follow in removing the auxiliary means and other parts of the packaging, as well as the appropriate way of handling.
- 5.3 Sécheron reserves the right to return the packaging to the Supplier and to be credited for it.

### 6. Transference of the risk and the property

- 6.1 Transference of the risks shall take place subsequent to reception of the product at the agreed delivery address in conformity with the order.
- 6.2 The product, as well as equipment delivered by Sécheron to the Supplier, shall remain entirely the property of Sécheron. The Supplier shall guarantee Sécheron against any risk of eviction.
- 6.3 The Supplier shall be responsible for all losses and all damage to the equipment, parts, machinery or documents belonging to Sécheron and placed at the disposal of the Supplier for the purpose of fulfilling the order. The Supplier shall accept the cost of all measures necessary in order to protect the property of Sécheron, including the protection of delivered or returnable documents. He shall conclude insurance contracts that are adequate both in terms of cover and of insured value.

### 7. Delivery date and consequences in the case of late delivery

- 7.1 Delivery shall be undertaken during the normal reception hours at the delivery address, on the date and at the destination agreed.
- 7.2 Except by written agreement, the agreed deadlines may not be changed by the Supplier. In particular, the latter may only take advantage of a possible delay by Sécheron if he has reacted immediately to this by requesting Sécheron to remedy the situation and clearly pointing out the consequences that could result there from.
- 7.3 In case of late delivery, Sécheron shall have the right to claim an amount equal to one (1) % of the agreed purchase price for each period of one (1) week of lateness (this condition being already fulfilled from the first day of such a period), the maximum, however, not exceeding ten (10) % of the total price of the order. These penalties shall be in addition to the losses that Sécheron could suffer, and that it reserves the right to claim in the form of damages.
- 7.4 The Supplier may not advance the delivery date or carry it out partially without the prior agreement of Sécheron. On the other hand, Sécheron may postpone the delivery date within a 6 months deadline framework, without compensating the Supplier for any related costs.

### 8. Guarantee by the Supplier

- 8.1 The fulfilment of the order shall be ensured by the Supplier in accordance with the customary rules, under his sole direction and sole responsibility. He must draw the attention of Sécheron to any feature susceptible to harm the good execution of the order, particularly by continually providing Sécheron with all information useful for this purpose.
- 8.2 The Supplier especially guarantees that the object delivered is appropriate for its intended use according to the specifications to be found in the order, has no defect that could restrict its value or utilisation in the expected application and attains the prescribed performance.
- 8.3 Sécheron reserves the option of refusing any delivery that is not in conformity with the order, to require and obtain its replacement, its repair or a financial indemnity for its lesser value. Sécheron reserves the right to claim a compensation from the Supplier by reason of the loss caused by this non conformity.

- 8.4 The reception tests or checks carried out by Sécheron shall not result in a reduction or limitation of the responsibility of the Supplier to deliver products in conformity with Sécheron's specifications.
- 8.5 Unless otherwise stipulated, the guarantee shall be for **24 months**, from putting the product into service of, but at the most **36 months** counting from its delivery.
- 8.6 If, during the guarantee period, it appears that the whole or part of the delivered product is not in conformity with the order, the Supplier may be required to repair or replace the defective product free of charge within a suitable time limit, all costs relative to it for transport, customs etc. shall be at his own expense. If the Supplier does not react in an appropriate way, Sécheron shall be entitled, without further notice, to take all measures that it considers necessary and at the expense of the Supplier.
- 8.7 If the defect noted during the guarantee period arises from a serial technical defect, the Supplier must replace or modify, at his own expense, the relative parts on all the delivered products, even if out of guarantee. A serial defect shall be deemed if the same defect manifests itself on 5% of the delivered products or of parts contained therein.
- 8.8 The Supplier guarantees the delivered product for all contractual responsibility towards Sécheron, as well as towards third parties for all responsibility on account of the product. In particular it guarantees that its use does not contravene intellectual property rights; it will assume the expenses of defence and compensation in relation with these guarantees or responsibilities without limitation in time and undertakes to absolve Sécheron from all sanction relative to it.
- 8.9 The same principles and conditions shall apply to replacement products, repairs and spare parts.

#### **9. Intellectual property**

- 9.1 Intellectual property rights relating to data, plans, outlines, documents, recordings etc. that have been delivered to the Supplier or brought to his knowledge, shall remain the property of Sécheron. The Supplier shall only use these data to the extent that they are necessary for carrying out the order from Sécheron. He is not permitted to reveal them to third parties without expressly written authorisation of Sécheron.
- 9.2 The Supplier shall return them to Sécheron at first request, as well as all copies, recordings etc. that may have been made of them, including all data that may have been recorded by computer, on cd-rom, etc. The Supplier is equally responsible for the respect of the above clauses by his sub-contractors even if their intervention was agreed by Sécheron.

#### **10. Cancellation**

- 10.1 Sécheron may immediately cancel the order and refuse delivery without compensating the Supplier:

- when the latter exceeds the agreed deadline by more than 4 weeks or does not respect the guarantee clauses,
- if it appears, before the expiry date of the deadline, that the latter will be exceeded or that the object will not be in conformity with the order.

- 10.2 The rights of Sécheron for damages remain reserved.

#### **11. Payment**

- 11.1 Except for agreement to the contrary, the net payment shall be carried out **60 days** after reception of the invoice, but at the earliest upon acceptance of the delivery;.
- 11.2 Possibility of proceeding by the setting off reciprocal debts is expressly agreed.

#### **12. Miscellaneous**

- 12.1 **Right to examine the ordered product:** Sécheron may, at any time, undertake visits and audits at the Supplier's site without entailing a modification or reduction in the obligations of the Supplier.

The latter undertakes to provide all useful information in direct relationship with the concerned product.

- 12.2 **Confidentiality:** The Supplier shall keep its relations and business with Sécheron confidential, without a time limit.

The Supplier shall treat the documentation and data provided by the Supplier and his sub-contractors as confidential. Failing that, the Supplier will have to pay off 50% of the annual average turnover generated by Sécheron as a penalty clause; damages and the option for Sécheron to demand the immediate cessation of the breach of confidentiality are expressly reserved.

At first request, the Supplier shall deliver documents to Sécheron whose return had been requested by the latter. He also undertakes to destroy immediately and on request of Sécheron any document in his possession which were provided by Sécheron, or copies that he may have made by some means.

- 12.3 **Force majeure:** the parties shall not be liable for the non-fulfilment of the contractual obligations in the case of force majeure. In order that the clause may be applied, the party invoking force majeure must indicate to the other the events that have arisen and their probable duration within three days of having acquired knowledge of a force majeure.

- 12.4 **Environment:** the object delivered must respect the legal and statutory prescriptions in force in Switzerland and Europe, as well as in such countries it must cross as a result of the place of delivery, especially in respect of hygiene, safety and environment.

#### **13. Applicable law and legal venue**

- 13.1 **Except for agreement to the contrary, only Swiss law shall be applicable to the contractual relationships between the parties, to the exclusion of the rules on the conflict of laws (LDIP) and the Vienna Agreement on contracts for the International Sale of Goods of 11 April 1980.**

- 13.2 **The legal venue shall be at Geneva, Switzerland.**