

General Terms and Conditions of Purchase (Rev 3)

These General Terms and Conditions of Purchase (hereinafter referred to as "GTC") are attached to purchase orders (hereinafter referred to as "Purchase Order") submitted by TOMOE SYSTEM INC. (hereinafter referred to as "Buyer") to sellers (hereinafter referred to as "Seller") for the purchase of Seller's products, parts or services (hereinafter referred to as "Products") and shall be a part of and incorporated into Purchase Order.

Seller's (i) full or partial performance under Purchase Order, (ii) acknowledgement of Purchase Order, or (iii) no acknowledgement of Purchase Order within seven days of the date of the purchase order, is deemed as acceptance of Purchase Order, including GTC. Any terms and conditions proposed in Seller's acceptance or in any acknowledgment of receipt of an offer, invoice, or any other forms used by Seller that add to, vary from, or conflict with the terms and conditions herein are **hereby rejected**.

1. Price and Quantity

The contract price and quantity are defined in Purchase Order, and unless otherwise expressed in Purchase Order, all prices and quantities shall not be subject to any adjustment.

2. Delivery

- (1) The delivery date of Products shall be defined in Purchase Order.
- (2) The delivery of Products shall be made based on CFR of INCOTERMS 2010, unless otherwise expressed in Purchase Order. The trade terms under Purchase Order and GTC shall be interpreted by INCOTERMS 2010 published by the International Chamber of Commerce.
- (3) If there is a possibility that Products cannot be delivered on schedule, Seller shall immediately notify Buyer in writing of the reason thereof and anticipated delivery date. Such notice shall not relieve any Seller's liability for the delay or any obligation hereunder.
- (4) If the delivery of Products is delayed due to Seller's reason, Seller shall indemnify Buyer from any penalties, costs or their amounts paid by Buyer as a result of the delay of delivery, including but not limited to transportation charges, taxes and related expenses.

3. Title and Risk of Loss

The title of and the risk of loss of Products shall pass from Seller to Buyer upon the delivery.

4. Payment

Payment shall be made in accordance with the terms set forth in Purchase Order. Any sums payable to Seller shall be subject to set off for any present and future Sellers indebtedness to Buyer.

5. Packing

- (1) Products shall be properly packed and marked in accordance with applicable laws and regulations, and Buyer's instructions set forth in Purchase Order or provided separately.
- (2) The costs of packing and marking shall be borne by Seller and included in contract prices of Product.

6. Warranty

- (1) Seller warrants that any Products delivered hereunder are (i) made from brand-new materials and based on the latest technology; (ii) free from defects in design, material and workmanship, and in conformity with Purchase Order and applicable specifications; (iii) fit for such intended use as expressed in Purchase Order or applicable specifications with merchantable quality and (iv) free from all liens and other encumbrances.
- (2) Seller further warrants that any Products are produced in compliance with all applicable laws, regulations, rules and ordinances of any public authorities relating to Products, including without limitation Japan and the country of manufacture.
- (3) The warranty period shall correspond to the warranty period provided on the Product for Buyer's customers.
- (4) If any non-conformity of Products with the warranty hereunder is found, Buyer may, without prejudice to any other remedies, at Seller's cost, (i) reject and return such non-conforming Products, (ii) require Seller to repair or replace such non-confirming Products with new ones, (iii) require Seller to compensate for losses or damages incurred by Buyer from such non-conformity of the warranty hereunder, or (iv) two or more of the above. Any repaired or replaced Products shall be subject to the same warranties and remedies as the original Products.

7. Liabilities and indemnification

- (1) Seller shall protect, indemnify, hold harmless and defend Buyer, its subsidiaries and affiliated companies from and against all losses, damages, claims, suits and other liabilities of any kind, including

without limitation attorney's fees and other expenses of dispute, arising out of, in relation to or in connection with any claim from any third party for damages for death, bodily injury or other property resulting from Products or Seller's breach of GTC or Purchase Order terms.

- (2) Notwithstanding the foregoing, Seller shall not be liable for the forgoing obligation if such claim is evidently caused solely and independently of all other means by reasons attributable to Buyer.

8. Infringement

- (1) Seller shall indemnify, hold harmless and defend Buyer, its subsidiaries and affiliated companies from and against all losses, damages, claims, suits and other liabilities of any kind, including attorney's fees and other expenses of dispute, arising out of, in relation to or in connection with any claim that Products infringe or are suspected to infringe any patent, design, trademark, copyright, trade secret, know-how or any other intellectual property rights of any third party.
- (2) Notwithstanding the foregoing, Seller shall not be liable for the forgoing obligation if such claim is evidently caused solely and independently of all other means by reasons attributable to Buyer.

9. Spare Parts

Unless otherwise provided in Purchase Order, Seller shall supply Buyer any spare parts required to repair and maintain Products at reasonable prices for the same period as Buyer's commitment and warranty to the customer from the date of delivery of Products.

10. Confidentiality

- (1) Seller shall:
 - (i) use any information disclosed by Buyer in the course of the transaction of Products hereunder ("Confidential Information") which shall include but is not limited to the identity of customers and customer lists, only for the purpose of performing the obligations hereunder, and shall not use it for any other purpose, including without limitation, for Seller's benefit or to Buyer's detriment, without the prior written consent of Buyer;
 - (ii) keep Confidential Information in strict confidence, and shall not disclose or divulge any Confidential Information to any third party without the prior written consent of Buyer; and
 - (iii) upon the request of Buyer at any time, cease to use Confidential Information and return to Buyer or destroy Confidential Information and all copies thereof in accordance with Buyer's instructions.
- (2) The foregoing obligation shall not apply to the extent Seller can prove that such information:
 - (i) was in Seller's possession without confidentiality obligation prior to receipt from Buyer;
 - (ii) is at the time of disclosure, or subsequently becomes, generally available to the public through no fault of Seller;
 - (iii) is lawfully obtained by Seller from a third party without an obligation of confidentiality, provided, however, that such third party is not, to Seller's best knowledge, in breach of any obligation of confidentiality to Buyer relating to that information; or
 - (iv) is independently developed by Seller without reference to any Confidential Information.

11. Cancellation

If Seller fails to perform any of the terms and conditions of any contract with Buyer, or if Seller becomes insolvent or the subject of a bankruptcy petition, Buyer shall have the right to cancel such contract in whole or part by giving a written notice to Seller, and Seller shall be bound to reimburse Buyer for any expense costs or losses incurred by Buyer from such cancellation.

12. Governing law

GTC shall be governed by the laws of Japan. The parties exclude application of the United Nations Convention on Contracts for International Sale of Goods.

13. Arbitration

All disputes, controversies or differences which may arise between the parties hereto, out of or in relation to or in connection with Purchase Order or GTC shall be finally settled by arbitration in Kobe Japan, in accordance with the Commercial Arbitration Rules of The Japan Commercial Arbitration Association.

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