

# General Terms and Conditions of Sale

For Products and Services of SWISSto12 SA – June 2022

## 1. General

1.1 These general terms and conditions of sale (the “**GTCS**”) apply to the contractual relationship between SWISSto12 SA (CHE-370.774.769), a company incorporated under the laws of Switzerland, with its registered office at Avenue des Baumettes 19, 1020 Renens (VD), Switzerland (“**SWISSto12**”) and its clients (each, a “**Client**”; SWISSto12 and the Client, collectively, the “**Parties**”, and each, individually, a “**Party**”).

1.2 These GTCS apply concurrently with the specific purchase order(s) placed by the Client and approved by SWISSto12 in writing, including its or their annexes and schedules (each, a “Purchase Order”), which together constitute the sale contract between the Parties (the “Contract”). In case of conflicts or discrepancies between the Purchase Order, its annexes and schedules, and these GTCS, these documents shall prevail in the following decreasing order of priority:

- the Purchase Order;
- the annexes and/or schedules to the Purchase Order (excluding any other terms and conditions, in particular any general terms and conditions of the Client); and
- these GTCS.

1.3 Unless specifically agreed otherwise by the Parties in writing, these GTCS apply exclusively, and any other general terms and conditions, in particular any general terms and conditions of the Client, are excluded and shall not apply.

1.4 SWISSto12 reserves the right to amend these GTCS at any time. SWISSto12 shall inform the Client of such amendments by any appropriate means, including by email or by publishing the amended GTCS on SWISSto12’s website. The Client is responsible for checking SWISSto12’s website regularly. Unless SWISSto12 receives written notice of objection within 30 (thirty) calendar days of informing the Client, the amended GTCS shall be deemed approved by the Client without reservation.

## **2. Scope of Work**

2.1 SWISSto12 shall provide the products and/or services set out in any Purchase Order (collectively, the “Work” or the “Goods”).

2.2 SWISSto12 shall carry out the Work, and deliver the Goods, respectively, as set out in the relevant Purchase Order.

## **3. Offers and Orders**

3.1 Costs estimates, offers and/or quotes made by SWISSto12 are indicative only and do not bind SWISSto12 in any way. Upon receipt of a Purchase Order from the Client, SWISSto12 provides a confirmation order that settles the contractual relationship terms. Only upon reception of such confirmation order shall the Purchase Order be considered as accepted.

3.2 Any oral arrangement or commitment requires a written confirmation from SWISSto12 to enter in force. Offers made by SWISSto12 shall remain valid for 30 (thirty) calendar days.

## **4. Change Order**

4.1 In case the Client is willing to change the terms and conditions of the Work and/or the Goods under any Purchase Order, the Client shall provide SWISSto12 with a proposed change order detailing such changes (each, a “Change Order”).

4.2 Any Change Order placed by the Client shall become valid only when approved by SWISSto12 in writing. Such an approved Change Order will serve as an amendment to the Purchase Order and shall be an integral part of the Contract. The terms and conditions of the Purchase Order, other than those amended by the Change Order, shall apply unchanged.

## **5. Cancellation**

5.1 Purchase Orders accepted by SWISSto12 are subject to cancellation by the Client only upon the prior written consent of SWISSto12. Upon a valid cancellation, SWISSto12 shall cease work and hold for the Client all completed and partially completed articles and work in progress and the Client shall pay SWISSto12 for all work and materials that have been committed to and/or identified to the Client’s Purchase Order plus a 10% cancellation charge.

## **6. Price and Customs Formalities**

6.1 The Price for the Work and/or the Goods shall be as detailed in the relevant Purchase Order (the “Price”).

6.2 Prices estimated or quoted by SWISSto12 are expressed in Swiss Francs (CHF) and “Ex Works” (“EXW”, Incoterms 2021). Unless otherwise agreed by the Parties, prices shall be estimated or quoted net, excluding in particular value added taxes (VAT), delivery works, delivery costs, packing costs, insurances costs, express service charges, and custom taxes, where applicable. These costs shall be borne by the Client and will be invoiced upon delivery of the Work and/or the Goods.

6.3 With the prior written consent of SWISSto12, other terms, like insurance, can be considered, provided that the Client will bear additional costs.

## **7. Payment Terms**

7.1 Unless otherwise agreed upon in writing, 20% of the Price shall be paid by the Client within 30 (thirty) days from placement of a Purchase Order.

7.2 The remaining 80% of the Price shall be payable by the Client within 30 (thirty) days from the date of the invoice issued by SWISSto12.

7.3 In case the Client is in default for the payment of one or several invoices, SWISSto12 shall charge a default interest at a rate of 1.5% per month, starting 30 (thirty) calendar days from the date of the invoice.

## **8. Delivery/Performance**

8.1 The Purchase Order and the annexes and/or schedules thereto shall define the time and place of delivery/performance of the products and/or services being part of the Work and/or the Goods.

8.2 Unless specifically agreed otherwise by the Parties in writing, the agreed date of delivery corresponds to the date when the Work and/or the Goods leave SWISSto12's premises. The time for delivery will be considered as met when SWISSto12 hands over the Work and/or the Goods concerned to the Client or carrier at the agreed time.

8.3 If the Work and/or the Goods includes the provision of technical and/or quality documentation, such documentation shall form an integral part of the Work and/or the Goods.

8.4 If SWISSto12 cannot comply with a delivery time for any cause other than the willful default of Swissto12 (e.g., unfulfilled obligation of the Client to cooperate or default of third parties), the delivery time shall be extended appropriately and SWISSto12 shall not be held liable for any loss or damage incurred by the Client.

8.5 SWISSto12 accepts no liability for delays in delivery by any carrier.

## **9. Technical Data**

9.1 When SWISSto12's Work and/or Goods are integrated by the Client in its own products, SWISSto12 provides ICD (Interface Control Drawings), to assure that the manufactured products will fit the external interface points as per the Client's specifications. This task is to be considered part of SWISSto12 services.

9.2 The Client agrees that the necessary technical data for SWISSto12's performance of the tasks under the Purchase Order shall be provided to SWISSto12 and agreed upon before SWISSto12 can start the manufacturing of the ordered Work and/or Goods. Failure to provide the requested data in a timely manner and in a complete and correct form will directly impact SWISSto12's ability to comply with an eventually agreed delivery date. Such situation would consequently free SWISSto12 from complying with such original delivery date.

9.3 SWISSto12 shall not be liable for any incorrect, contradictory, and incomplete data given by the Client; any consequences arising from the above shall be borne by the Client. Furthermore, SWISSto12 shall not be held responsible for verifying whether layouts, technical data or information delivered to SWISSto12 are correct, complete or do not contradict each other.

## **10. Transfer of Ownership and Risks**

10.1 The transfer to the Client of ownership and risks to products that are part of the Work and/or the Goods shall take place upon delivery of such products at the place of delivery defined in the Purchase Order.

10.2 If the delivery is delayed at the request of the Client by more than 30 (thirty) calendar days, SWISSto12 shall be entitled to receive a fair compensation for the storage of the goods. The Client bears the risks in regard to the Work and/or the Goods in case of delay, even if the Work and/or the Goods are stored by SWISSto12.

## **11. Reservation of Ownership**

11.1 All goods supplied by SWISSto12 remain property of SWISSto12 until receipt of payment in full.

11.2 The Client is obliged to provide adequate storage of goods and to protect them from fire, theft, floods or other risks at its own expense as long as SWISSto12 holds the ownership title.

11.3 All tooling or instruments, standard or custom made for the production of the SWISSto12 products remain the sole property of SWISSto12. This applies even when the customer has paid a part or whole of such tooling or instruments.

## **12. Subcontracting and Assignment**

12.1 SWISSto12 reserves the rights to use subcontractors necessary for the provision of the Work and/or the Goods.

12.2 SWISSto12 shall be entitled to assign any of its rights and obligations under the Contract to any of its affiliates.

12.3 The Client may not assign or transfer, in whole or in part, or delegate all or any portion of its respective rights or obligations hereunder and/or the Contract without the prior written consent of SWISSto12. Any assignment, transfer or delegation made without such consent shall be null and void.

## **13. Inspection and Acceptance**

13.1 The Client is required to carry out a complete and thorough inspection of the Work and/or the Goods upon receipt and to send a written notice to SWISSto12 of any defect, damage, missing components or problems without any delay, but within 7 (seven) days of receipt of the Work and/or the Goods provided by SWISSto12. In case no such written notice is addressed to SWISSto12, the Work and/or the Goods shall be deemed accepted.

13.2 In the event that the Client notifies a defect or problem according to clause 13.1, SWISSto12 will determine the actions to be undertaken to remedy the problem. No return of products shall be made without authorization of SWISSto12.

13.3 Minor variations in materials, surface and color, which are due to the nature of the manufacturing process and do not affect the capabilities of the Work and/or the Goods, do not entitle the Client to make any complaint and are not considered defects. Work and/or Goods purchased on the basis of weight are subject to customary quantity variations recognized by practice in the industry. In the event the Client has any doubt concerning the minor variations, it shall contact SWISSto12 for further explanations.

13.4 All costs incurred and damages sustained by SWISSto12 as a result of inspections or rejections made under the provisions hereof shall be borne by the Client.

## **14. Warranty**

14.1 SWISSto12 warrants to the Client that its Work complies with the specifications of the Purchase Order, and that it has been performed in full compliance with the rules of the trade and with due care and diligence. If a product ordered has a limited shelf life; the material shall be identified on each container with the applicable specification, lot number, date of manufacture, and expiration date.

14.2 The foregoing warranty is SWISSto12's sole warranty with respect to these products. All other warranties, express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose or warranty claims deducted from information contained in catalogues, brochures or other written or oral statements are hereby disclaimed. SWISSto12's liability for breach of warranty hereunder is limited solely to the replacement of the defective Work and/or Goods, which shall be returned to SWISSto12's plant, transportation charges prepaid by the Client; the failure to give notice of a warranty claim and to exactly describes the type of defect within 15 (fifteen) calendar days from date of delivery shall constitute a waiver by the Client of all claims in respect to such Goods. The foregoing shall constitute the sole remedy of the Client and the sole liability of SWISSto12 under this warranty.

14.3 The warranty period is 12 (twelve) months from the date of the delivery.

14.4 SWISSto12 only provides warranty on Work and/or Goods for their defined purpose. SWISSto12 assumes that suitably qualified and trained personnel will use its Work and/or Goods. SWISSto12 accepts no responsibility with respect to production data and orders received if they are due to incomplete, incorrect or concealed data. No warranty is provided in cases where the points mentioned under this clause 14.4 are not respected.

14.5 Defects resulting from assembly after delivery, insufficient set-up, non-observance of installation requirements and conditions of use, excessive use of parts beyond the performance advised by SWISSto12, negligent or improper treatment or use of unsuitable operating materials shall be excluded from warranty. SWISSto12 shall not be liable for damage cause by acts of third parties. Furthermore, warranty shall forfeit immediately if the Client itself or a third party that has not been authorized by SWISSto12 repairs the delivered items without the written consent of SWISSto12.

14.6 Assertion of a defect shall not release the Client from its payment obligation. Furthermore, should a defect have been identified by the Client, any disposal of the Goods without the express consent of SWISSto12 shall be unacceptable.

14.7 In no case, the warranty shall extend further than the net value of the delivered item. Prototyped products are not subject to any warranty.

## **15. Liability**

15.1 SWISSto12 is only liable in case of breach of the Contract caused through willful misconduct or gross negligence. Liability for auxiliaries is expressly excluded.

## **16. Third Party Rights**

16.1 The Client agrees to save and hold SWISSto12 harmless from any claims, demands, liabilities, costs, expenses or judgments arising in whole or in part, directly or indirectly, out of the negligence or lack of care by the Client or the Client's customers, agents, employees or invitees involving the use of the Work and/or the Goods supplied by SWISSto12.

16.2 Such indemnification shall include all costs, attorney's fees and other expenses paid or incurred by or imposed upon SWISSto12 in connection with the defense of any such claim.

## **17. Intellectual Property**

17.1 Any concept, discovery, invention, development, research, technology, work of authorship, trade secret, software, firmware, content, material, tool, process, technique, know how, data, plan, device, apparatus, specification, design, prototype, circuit, layout, algorithm, program, code, documentation, catalogues, brochures illustrations or other material or information, tangible or intangible, whether it may be patented, copyrighted, trademarked or otherwise protected (collectively "IP"), which was created, discovered, developed, owned or controlled by SWISSto12 shall remain at all times the property of SWISSto12.

17.2 The Client shall have a non-exclusive, non-transferable license to use SWISSto12's IP to the extent strictly necessary for the purpose of using the Work and/or the Good which are the subject of the Contract.

17.3 SWISSto12 shall have a non-exclusive, non-transferable license to use the Client's IP to the extent strictly necessary for the purpose of the Contract. The Client represents and warrants to SWISSto12 that it is the sole legal and beneficial owner of all such IP. In particular, the Client guarantees that it is the owner of all rights on layouts, technical data or information for which it requests services or products from SWISSto12. The Client shall not knowingly infringe on any third-party intellectual property rights. SWISSto12 shall not be held responsible for verifying whether layouts, technical data or information delivered to SWISSto12 infringe any existing IP rights, copyrights or patents.

17.4 The Parties shall treat all IP as Confidential Information (as defined below).

17.5 SWISSto12 owns the intellectual property on its production processes and designs. SWISSto12 reserves the right to reproduce the layouts produced by itself. Except as otherwise specifically set forth herein or in the Contract, nothing contained herein or the Contract nor the delivery of any product by SWISSto12 or the provision of any services by SWISSto12 shall be deemed to grant the Client any rights or licenses over any IP of SWISSto12.

17.6 The Client shall hold SWISSto12 harmless and shall fully indemnify SWISSto12 and be liable from, all losses, damages, liabilities, actions, suits, claims, proceedings, demands, costs and expenses which may arise from, or be incurred by reason of, any infringement, violation, alleged infringement or alleged violation of any third party patent, design, trademark, name, copyright or other protected right in respect of the Work and/or the Goods sold hereunder and any other plant, machinery, tools, goods, process, work, material, matter, think or method used or supplied by or on behalf of the Client.

17.7 The Client will not assert or transfer to any third party a right to assert against SWISSto12 or SWISSto12's customers any IP that the Client has or may have that are applicable to the Work and/or the Goods used or furnished under the Purchase Order.'

17.8 SWISSto12 shall not be liable for any incorrect, contradictory, and incomplete information given by the Client; any consequences arising from the above shall be borne by the Client.

## **18. Confidentiality**

18.1 "Confidential Information" shall mean and include any and all proprietary and/or non-public information and materials disclosed by a Party (the "Disclosing Party") to the other Party (the "Receiving Party"), or otherwise received or obtained by the Receiving Party, in view or in connection with the Contract, whether technical, commercial, financial, or otherwise (in oral, written, or any other form), and including any and all in any form or stage of development, and any other subject matter, material, or information that is considered to be proprietary or confidential and/or that otherwise qualifies for protection under any law providing or creating intellectual property rights. Information and materials will be considered Confidential Information regardless of the form or manner of disclosure or whether or not it is marked as "Confidential" or with a similar label. Confidential Information shall include information generated on the basis of Confidential Information.

18.2 Confidential Information shall not include information that the Receiving Party can evidence: (a) was discovered or created by, or was otherwise in the possession of the Receiving Party before its receipt from the Disclosing Party; (b) is or becomes available to the public through no fault of the Receiving Party; (c) is received by the Receiving Party in good faith from a third party having no duty of confidentiality to the Disclosing Party; (d) is required to be disclosed by law or court action (in



which case the Receiving Party shall immediately notify the Disclosing Party to allow the Disclosing Party the opportunity to oppose such disclosure); or (e) is independently developed by the Receiving Party without the use or benefit of Confidential Information as evidenced by written records. The burden of proof of showing that information or materials fall within one of the exclusions above shall rest with the Receiving Party.

18.3 The Parties will maintain the secrecy and confidentiality of Confidential Information received from the other Party in connection with the Contract. The Receiving Party (i) shall not disclose the Disclosing Party's Confidential Information to any third party without the prior written consent from the Disclosing Party, (ii) shall only use the Disclosing Party's Confidential Information for the purpose of the Contract and as contemplated by the Contract and (iii) shall not copy or reverse engineer, reverse compile, nor attempt to derive the composition or underlying code or other information of any Disclosing Party's Confidential Information. Notwithstanding the above, SWISSto12 is authorized to disclose received Confidential Information to prospective subcontractors or information technology providers to perform the Work and/or the Goods under the Contract or the Purchase Order or to obtain information, prices, quotes, etc. in order to offer the performance of the Work and/or the Goods. Such disclosure is only permitted provided that the potential subcontractors or information technology providers are required, through written agreement, to hold such information in confidence under limitations at least as restrictive as those set forth herein. SWISSto12 will be liable to the Client for any breach of such obligation by such prospective subcontractor or information technology provider. The Receiving Party shall not remove any confidentiality, proprietary, or other similar markings from Confidential Information. The Receiving Party also agrees to adopt measures to protect the secrecy and confidentiality of Confidential Information that are reasonable under the circumstances.

18.4 The Parties are responsible for compliance with the terms of the Contract by their respective employees and agents. The Parties represent and warrant that they have entered or will enter into agreements with any such employees and agents as necessary to fulfill their respective confidentiality obligations hereunder.

18.5 Upon the end or termination of the Contract for whatever reason, or at the earlier request of the Disclosing Party, the Receiving Party shall, at the election of the Disclosing Party, return or destroy all originals and copies of Disclosing Party's Confidential Information, or, in case of Confidential Information stored in electronic, magnetic or digital media, shall erase or render unreadable all materials furnished (including, without limitation, working papers containing any Confidential Information or extracts therefrom) which contain Confidential Information.

18.6 The obligations of confidentiality hereunder shall survive the end or termination of the Contract for whatever reason indefinitely.

18.7 Any specific non-disclosure agreement entered by and between the Parties shall apply and remain unaffected.

## **19. Compliance with Laws, Regulations and Export/Import Licenses**

19.1 The Client warrants that the Client has obtained, and shall hold on a continued basis all necessary permits or authorizations for the use of the Work and/or the Goods (if any). In this respect, the Client shall comply with all applicable laws, regulations, codes and standards.

19.2 In case the implementation of the Contract is subject to export or import licenses/authorizations, the Client shall obtain all such licenses/authorizations in time for all relevant deliverables and shall prepare and submit the related documentation and carry out all necessary formalities to that aim.

## **20. Communications**

20.1 Unless otherwise agreed in the Purchase Order, any notice or communication within the framework of the Contract shall be in writing (including by email) and shall be either personally delivered, mailed by registered mail, or emailed (with copy to follow by registered mail), to the addresses of the Parties set out in the Purchase Order.

## **21. Independent Contractor**

21.1 The Client shall at all times be an independent contractor, and not an agent, partner or joint venturer of SWISSto12, and nothing contained in the Contract shall be deemed to create any agency, partnership or joint venture relationship between the Parties. The Parties and their respective representatives shall have no authority to bind or commit the other Party to any obligation or agreement, or speak for, represent or obligate the other Party in any way.

## **22. Force Majeure**

22.1 SWISSto12 shall not be in default by reason of its delay in the performance of, or failure to perform, any of its obligations hereunder or the Contract if such delay or failure is caused by strikes, labor disputes, embargos, epidemics, quarantine restrictions, natural disasters, unusually severe weather, floods, earthquakes, fire, explosions, power surges, acts of God, or the public enemy, war, civil unrest, riots, acts or threats of terrorism, transport problems, communication network breakdowns, restrictions on import, export and transit, exchange restrictions on international payments, shortage in raw materials and energy, breakdown of operations of other events or other events which arise from circumstances beyond the reasonable control of SWISSto12 (including, without limitation, delays caused by government priorities or by regulations, delays in obtaining

export approval, or revocation of such approval), as well as other force majeure cases commonly recognized under applicable law ("Force Majeure"). During the pendency of such Force Majeure, SWISSto12 shall take all reasonable steps to fulfil its obligations hereunder and/or the Contract by other means and, in any event, shall upon termination of such Force Majeure, promptly resume its obligations hereunder and/or the Contract.

## **23. Waiver and Severability**

23.1 Failure or delay of SWISSto12 in exercising any of its rights shall in no way constitute a waiver of those rights nor shall such failure excuse the Client from any of its obligations.

23.2 No single or partial exercise of any right, power, privilege or remedy by SWISSto12 shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

23.3 The rights, powers and remedies of SWISSto12 provided in these GTCS are cumulative and are not exclusive of any rights, powers or remedies provided by law or otherwise.

23.4 The Parties agree that if any part of the Contract and/or any Purchase Order is found to be invalid, void, unenforceable or unlawful under any enactment or rule of law pertaining thereto of any jurisdiction, the legality, validity and enforceability of the remainder of the Contract and/or the Purchase Order in that jurisdiction shall not be affected, and the legality, validity and enforceability of these GTCS shall not be affected in any other jurisdiction.

## **24. Data Protection**

24.1 Each Party undertakes to process personal data with due diligence, in accordance with the Regulation (EU) 2016/679 of the European Parliament and the Council of April 27, 2016 (GDPR) and applicable Swiss laws.

## **25. Applicable Law and Dispute Resolution**

25.1 These GTCS and the Contract shall be governed, interpreted and construed by, under and pursuant to the substantive laws of Switzerland, without regard to conflict of laws principles thereof. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

25.2 Any dispute, controversy or claim arising out of or in relation with these GTCS and/or the Contract, including the validity, invalidity, breach or termination thereof, shall be subject to the exclusive jurisdiction of the courts of Geneva, Switzerland, the right of appeal to the Swiss Federal Tribunal being reserved.



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