

**General Terms and Conditions of Commercial Sale  
of the  
Smartrac Technology Group  
for  
the Americas**

**1. Definitions**

**Affiliate** shall mean an entity which is controlled by SMARTRAC, which controls SMARTRAC or which is under common control with SMARTRAC and "control" means the direct or indirect ownership of more than 50% of the shares or interests entitled to vote for the directors thereof or the equivalent, for so long as such entitlement subsists, or equivalent power over management thereof.

**Buyer** shall mean the purchaser of any Products from SMARTRAC.

**Contract** shall mean an agreement of any form concluded between SMARTRAC and Buyer for sale and purchase of Products, including, but not limited to written or electronic agreements or confirmed purchase orders. Each reference herein to "the Contract" refers to a particular Contract to which these GSC apply.

**Delivery** shall mean the pickup of sold Products by the carrier at SMARTRAC's premises.

**GSC** shall mean these general terms and conditions of sale.

PO means a purchase order submitted by Buyer.

**Products** shall mean any goods and/or services to be supplied or performed by SMARTRAC under any Contract or otherwise.

**SMARTRAC** shall mean, with respect to any Contract, any Affiliate of SMARTRAC N.V. based in the Americas (North, Central & South America) entering in such a Contract.

**2. Applicability of SMARTRAC's GSC**

2.1 The GSC apply to and form an integral part of all quotations, acknowledgements, confirmations of POs, Contracts and deliveries made by SMARTRAC unless and to the extent SMARTRAC explicitly agrees otherwise in writing.

2.2 Any terms and conditions no matter if contrary to, supplemental or in deviation from the GSC set forth on any document or documents issued by the Buyer either before or after issuance of any document or legally binding statement by SMARTRAC are hereby explicitly rejected and disregarded by SMARTRAC, and any such terms shall be wholly inapplicable to any sale made by SMARTRAC to Buyer and shall not be binding in any way on SMARTRAC, unless they have been expressly approved by SMARTRAC in writing.

2.3 Unless expressly agreed to by SMARTRAC in writing, SMARTRAC shall not be deemed bound (by delivery, acknowledgement of the Buyer's PO or otherwise) by any provisions of the PO or other documents which are inconsistent with the provisions hereof.

**3. Formation of Contract; Acceptance of POs and Performance**

3.1 A Contract for a purchase shall be deemed formed and valid between SMARTRAC and the Buyer upon (i) Buyer's receipt of SMARTRAC's written confirmation of a PO submitted by the Buyer or (ii) SMARTRAC's receipt of Buyer's acceptance of a SMARTRAC quotation.

3.2 SMARTRAC may modify the technical specifications for any Product subject to a Contract without Buyer's consent by providing notice of such modification to Buyer not later than the 45th day following formation of such Contract.

3.3 SMARTRAC's quotations are valid for a period of thirty (30) days from their date of issue but may be withdrawn or revoked within such 30-day period by SMARTRAC at any time prior to receipt of Buyer's written acceptance thereof. Buyer may revoke or cancel any PO until such PO is confirmed by SMARTRAC. Following such confirmation Buyer may cancel or revoke a PO only by a written notice to SMARTRAC no less than 30 days before the scheduled shipment date setting forth Buyer's written agreement (satisfactory to SMARTRAC) to pay all costs, charges and expenses incurred in respect thereof. SMARTRAC reserves the right to make minor technical modifications to its offer after the Contract has been concluded.

3.4 Unless incorporated in the Contract by express reference, SMARTRAC shall have no responsibility for Products complying with any further requirements or standards other than SMARTRAC's established quality for the Products in question. Any diagrams, brochures, samples, models and/or similar information or materials other than specifications indicated as such that are made available to Buyer with regard to the Products are for indicative purposes only.

3.5 Place of performance shall be SMARTRAC's premises.

3.6 SMARTRAC may terminate negotiations with Buyer at any time before the formation of a contract, without having to state the reasons for doing so, without having to pay compensation and without being under any obligation to continue negotiating.

**4. Prices; Payment**

4.1 All Products shall be delivered, and all prices quoted by SMARTRAC are based on delivery, "Ex Works" (INCOTERMS 2010) SMARTRAC's premises and exclusive of VAT, as well as any other and similar taxes, levies and duties, all of which taxes, levies and duties shall be paid by Buyer.

4.2 SMARTRAC may increase its prices under any Contract at any time by an amount, determined by SMARTRAC using such allocation methods as SMARTRAC determines in its sole discretion, (i) equal to any increase in the price of one or more of the elements determining SMARTRAC's production price, (ii) equal to any increase in SMARTRAC's costs by reason of changes requested by Buyer, (iii) equal to any additional or increased duty, tariff, tax or other charge imposed as a result of any action by the U. S. Government, any state or local government or any agent or agency thereof, or (iv) as necessary to compensate SMARTRAC for exchange rate variations.

4.3 In case no payment provisions should be provided for in the Contract, payment shall be made in USD within thirty (30) days from the date of invoice and without any deductions, provided however that if Delivery of the Products is delayed by a reason within Buyer's control, payment shall be due on the first day SMARTRAC is prepared to make shipment. Payment shall be considered effected when the applicable funds are collected and fully available to SMARTRAC.

4.4 Where deferred payment has been specifically granted by SMARTRAC, the time for payment shall be calculated from the date of SMARTRAC's invoice.

4.5 Failure to comply with the terms of payment by the Buyer, whether under the GSC or any Contract, shall be regarded as a fundamental breach of contract in which case SMARTRAC (i) may refuse its performance under any or all outstanding Contracts until past due payments are made in full, (ii) may suspend, delay or cancel any credit under any or all outstanding Contracts, (iii) may, if such failure continues for seven (7) days following notice by SMARTRAC to Buyer, cancel

any or all outstanding Contracts. Such rights shall be in addition to, and not in lieu of any other rights and remedies available under law, whether under the Contract, tort, the GSC or otherwise.

4.6 Without prejudice to any other rights and remedies that SMARTRAC may have, overdue payments on any Contract shall bear interest from the date due until fully paid at the rate of 10% per annum or, if less, the maximum amount permitted by applicable law.

4.7 All costs incurred by SMARTRAC in connection with overdue payment, including but not limited to costs of drafting and sending of collection letters, the conduct of settlement negotiations and the performance of any other acts relating to the preparation of possible legal proceedings shall be paid by Buyer.

4.8 SMARTRAC may accept partial payment in an amount less than the full amount of any invoice but such acceptance shall not constitute a waiver of SMARTRAC's right to collect the balance, notwithstanding SMARTRAC's endorsement of a check or other instruments.

4.9 At any time when any payment due to SMARTRAC under any Contract is past due, SMARTRAC may withhold its performance, and may suspend, delay or cancel any credit, under any or all outstanding Contracts. Any date for delivery under any Contract shall be extended by the period of such withholding of performance. Such rights shall be in addition to, and not in lieu of any other rights and remedies available to SMARTRAC.

4.10 Irrespective of Buyer's instructions any payments shall be applied first to accrued but unpaid interest under Section 4.6 and then to principal.

4.11 SMARTRAC's obligations hereunder shall at all times be subject to credit approval of Buyer at SMARTRAC's sole discretion. The Buyer shall provide such credit information, references and assurances as SMARTRAC requests from time to time. Buyer authorizes each reference party provided by Buyer to release credit information regarding Buyer and its accounts, and warrants that all information and assurances provided by Buyer to SMARTRAC shall be true and correct to the best of Buyer's knowledge. Buyer agrees to indemnify SMARTRAC, its Affiliates, employees and agents from any and all liability resulting from the released information and credit approval or rejection. SMARTRAC, in its sole discretion and judgement may discontinue credit at any time without notice.

## 5. Security Interest; Retention of Title

5.1 Although possession of the Products may change in the course of sales SMARTRAC reserves a security interest in all Products delivered and where permitted by law, title to the Products sold shall remain vested in SMARTRAC until the purchase price for the Products has been paid in full and received by SMARTRAC. Buyer shall give to SMARTRAC such assistance as SMARTRAC requests in taking any measures required to protect SMARTRAC's rights in the Products, including such rights as the law of any applicable state permits SMARTRAC to retain.

5.2 The Buyer shall store and/or mark the Products in a manner indicating that title to them remains vested in SMARTRAC.

5.3 If Products in which title has been retained by SMARTRAC are used by Buyer to create a new Product, the latter shall be deemed to have been created jointly for SMARTRAC as joint owner. Buyer shall hold the relevant new Product for the joint ownership and account of Buyer and SMARTRAC, until Buyer has fulfilled all obligations in respect of the relevant Products.

5.4 Until Buyer has paid all amounts due in full, Buyer will not pledge or otherwise encumber the Products. Sale or other disposition of the Products to third parties by Buyer is permitted in the normal course of Buyer's business. Buyer grants SMARTRAC a security interest in all Buyer's claims arising from such sales to secure Buyer's obligations under the Contract and the GSC. Buyer authorizes SMARTRAC to file such financing

statements as SMARTRAC deems appropriate to perfect the security interest granted hereby.

5.5 Buyer shall notify SMARTRAC immediately if, prior to payment in full, a third party enforces rights in the Products or Buyer becomes aware of the fact that a third party intends to do so.

5.6 Buyer shall, at its own expense, until payment in full for the Products, insure the Products to their full replacement value against the risk of loss or theft or damage and arrange for SMARTRAC to be noted on the policy of insurance as the loss payee.

5.7 In the event that Buyer sells or otherwise disposes of any Product prior to payment to SMARTRAC therefor in full, Buyer shall remit such payment to SMARTRAC immediately following such sale. Until so remitted, all payments for such Product received by Buyer shall be held in trust by Buyer for and as the property of SMARTRAC and shall not be commingled with any funds or property of Buyer.

## 6. Shipping; Passing of Risk

6.1 All references to trade terms shall be construed in accordance with Incoterms 2010. If no trade term should be specifically agreed upon in the Contract, the applicable trade term shall be "Ex Works SMARTRAC's premises". SMARTRAC may, upon Buyer's request and expense, arrange for carriage with proper carrier and obtain convenient transport insurance on Buyer's behalf.

6.2 SMARTRAC is entitled to supply Products in partial shipments and to invoice these as separate instalments. Special packing or marking, as well as small shipments are subject to surcharge.

6.3 Irrespective of the contractual Incoterm, any security interest or the passage or non-passage of title, the risk of damage to or loss of the Products always passes to the Buyer on dispatch or Delivery of the Products.

## 7. Time of Shipment; Delay

7.1 Any dates indicated by SMARTRAC are estimates only.

7.2 Delivery times/dates can be met only if all the materials, documents, permits and clearances to be provided by the Buyer are provided in due time and if the Buyer meets the agreed terms of payment including upfront payments and any other applicable obligations.

7.3 In the event of a delay in Delivery by SMARTRAC, other than by reason of circumstances identified in Section 12 (Force Majeure), Buyer may demand reimbursement of any loss caused by such delay in an amount not exceeding 0.5% of the value of the Delivery concerned per week of delay, up to a maximum of 5% of the value of such Delivery.

7.4 In case of default by SMARTRAC for excusable causes referred to in Section 12 (Force Majeure) below, or caused by an act or omission on part of the Buyer or because SMARTRAC itself wasn't supplied by its own suppliers, the Delivery time/date shall be extended by a reasonable period. If supply in an equivalent manner and price should not be possible, SMARTRAC may terminate the Contract without liability to Buyer.

7.5 If Delivery of the Products fails for reasons within Buyer's control, SMARTRAC, without prejudice to any other right or remedy it may have, may store the Products at the risk and cost of the Buyer. Unless Buyer's failure is due to circumstances stated in Section 12 (Force Majeure), SMARTRAC shall be likewise entitled to cancel the Contract in respect of the undelivered Products and claim damages, as may be the case.

## 8. Duty to Inspect

8.1 Upon receipt of the Products the Buyer shall promptly and without any delay, using due diligence, examine the same both as to their quality and quantity. Unless the Buyer notifies SMARTRAC in writing to the contrary within a period of five (5) business days from the receipt thereof and provides a reasonably detailed statement of the claimed defect or non-

conformity including proof of date of purchase and delivery, the Products shall be deemed to have been duly received in agreed quantity and without any apparent damage.

8.2 Each shipment shall be considered to be in accordance with the Contract when the quantity dispatched neither exceeds nor falls short of the contractual quantity by more than +/- 5% in number of pieces. Buyer shall pay for the quantity actually delivered.

## 9. Confidentiality

Buyer shall treat as confidential any commercial and technical information which is not generally known and which has come to its knowledge by virtue of its business relationship with SMARTRAC and shall not divulge such information to any third party. Any offers or other documents which SMARTRAC provides are to be treated as confidential in accordance with this Section, whether or not otherwise covered by the preceding sentence. Any information provided by SMARTRAC to Buyer is given "AS IS", without any warranties, express or implied concerning accuracy, completeness or applicability of it.

## 10. Compliance with laws

10.1 The parties will comply with all applicable laws of each applicable jurisdiction, including the laws of the contracting party's countries of residence but also the U.S. Foreign Corrupt Practices Act, the UK Bribery Act 2010 and any applicable export and import laws and control regimes.

10.2 When suspicious facts arise indicating a possible breach of Section 10.1, Buyer will permit independent chartered accountants engaged by SMARTRAC to conduct, during normal business hours, an audit of Buyer's business related to the Contract. Buyer will cooperate with such audit to the best of its abilities, including granting free access to its business premises and supplying all details, reports, data and other information relating to the Contract as SMARTRAC or the independent chartered accountants may reasonably request. In the event of a breach of the foregoing by Buyer, SMARTRAC may cancel any Contract with Buyer immediately for cause and Buyer shall indemnify and hold harmless SMARTRAC against any and all claims, losses or damages arising from or related to such breach and/or cancellation of the Contract.

## 11. Discontinuation of Products

SMARTRAC may in its sole discretion decide to discontinue the manufacturing, sale or production of any Product at any time, but such discontinuance will not relieve SMARTRAC of its obligations with respect to any Contract regarding such Products prior to discontinuance.

## 12. Excusable Delays (Force Majeure)

12.1 Non-performance of either party shall be excused, if such party is prevented, as a result of one or more circumstances or contingencies reasonably beyond that party's control, whether directly or indirectly, which shall include the circumstances referred to in the next Section, in whole or in part. If performance is thus prevented (i) for a period of less than six consecutive (6) months, the Contract shall be performed when no longer so prevented, (ii) for a period of six (6) consecutive months or longer, the Contract with respect to the unexecuted portion of the dispatch may be rescinded by either party upon thirty (30) days' notice.

12.2 Circumstances or contingencies beyond a party's control include but are not limited to: acts of God, acts (including failure to act) of any governmental authority, wars (declared or undeclared), blockades, embargoes, port congestion, riots, revolutions, acts of terror, explosions, sabotage, strikes or other labor disputes, fires, flood, earth quake, storms, epidemics, delays or failures in deliveries by any subcontractor or other supplier, and inability to timely obtain required materials.

12.3 SMARTRAC shall as soon as possible notify Buyer of such delays. Time for Delivery shall be extended by at least a period equal to the time lost by above given reasons.

12.4 The foregoing shall apply even if any of those causes existed at the time of the quotation or when entering into the Contract or occur after SMARTRAC's performance of its obligations has been delayed for other causes.

## 13. Warranty

13.1 SMARTRAC warrants to Buyer that all Products will, at the time of Delivery and for a period of twelve (12) months thereafter (the "Warranty Period"), be free from defects in material and workmanship and comply with the requirements and standards agreed to in the Contract (the "Limited Warranty"). Sample Products are dispatched without any warranty at all.

13.2 A flaw count (defects) in respect to the total quantity sold of less than one and a half (1.5) percent with respect to Prelam-sheets and/or less than one (1) percent otherwise, shall be deemed in conformance with the Contract.

13.3 Products shall not be deemed non-conforming solely by reason of minor modifications or changes in materials from those specified in the Contract as long as such modifications and changes do not adversely affect the properties and functionality of the Products.

13.4 Buyer must notify SMARTRAC of any claim for breach of warranty in writing not more than twenty (20) business days from the date of discovery. Any claims not asserted by then shall be time-barred.

13.5 When considered necessary by SMARTRAC Buyer shall allow SMARTRAC or its representatives to inspect the whole shipment that includes any allegedly non-conforming Products (which inspection may include both conforming and non-conforming Products). If Buyer denies SMARTRAC the right to inspect the whole shipment, SMARTRAC's liability shall in no event exceed the net invoice value of the defective or non-conforming Products that SMARTRAC has had the opportunity to inspect.

13.6 In the event any Product fails to meet the Limited Warranty and provided that the Buyer notifies SMARTRAC thereof within the time specified in Section 13.4, SMARTRAC's exclusive obligation and Buyer's exclusive remedy shall be, at SMARTRAC's option, (i) supplying the missing Product, (ii) repair or (iii) replacement of the relevant Product or (iv) reimbursement of the purchase price of the relevant Product in exchange for their return. SMARTRAC may refuse to accept any Product returned without SMARTRAC's prior authorization or without original packaging or equivalent. For valid rejections of Products or warranty claims SMARTRAC will bear the reasonable costs of carriage. Buyer is obliged to follow any instructions given by SMARTRAC with respect to the storage and return of such Products. Failure to conform to the Limited Warranty shall not be a cause for extension of the Warranty Period.

13.7 SMARTRAC's obligations as set forth above shall not apply to defects caused by improper transport, handling, storage, installment, application, test, assembly, use, maintenance or integration into a product or any other kind of misuse or abnormal physical or electrical stress, abuse, negligence, mishandling or alteration or that has been involved in an accident. SMARTRAC is not liable for defects arising out of materials or specifications provided or a design stipulated or specified by or on behalf of the Buyer.

13.8 EXCEPT AS EXPRESSLY PROVIDED HEREIN, SMARTRAC MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED BY SMARTRAC AND WAIVED BY BUYER. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY GIVEN.

## 14. Limitation of Liability

14.1 If circumstances occur which may give rise to claims to damages or the right to any other form of relief based on



contract, warranty, indemnity, negligence or otherwise, the claiming party shall take all necessary measures to mitigate the damage or loss.

14.2 Notwithstanding any other provision contained herein or in the Contract (i) such claim or relief shall be limited to substantiated direct damages which on the effective date of the Contract could reasonably be foreseen; (ii) the aggregate liability to the Buyer arising under or in connection with the Contract on any and all claims whether in contract, tort or otherwise at law or equity, shall not exceed the total amount paid by the Buyer to SMARTRAC in a twelve (12) month period directly preceding the determination of any liability; (iii) any such liability terminates on the expiration of the Warranty Period (see Section 13.1 above).

14.3 EXCEPT AS PROVIDED IN PARAGRAPHS 14.1 & 14.2, IN NO EVENT WILL SMARTRAC BE LIABLE UNDER ANY THEORY OF RECOVERY (WHETHER BASED ON CONTRACT, NEGLIGENCE OF ANY KIND, STRICT LIABILITY OR TORT OR ELSE) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOST PROFITS OR OPPORTUNITIES, DAMAGE TO OR IMPAIRMENT OF OTHER GOODS OR DATA, LIABILITY TO THIRD PARTIES (EXCEPT FOR A VALID IP INFRINGEMENT), LOST BUSINESS, BUSINESS INTERRUPTION, FAILURE TO MEET ANY DUTY, OR ANY COSTS OR EXPENSES FOR PROCUREMENT OF SUBSTITUTE PRODUCTS, IN ANY WAY RELATED TO, ARISING FROM OR RESULTING FROM THE SALE OF PRODUCTS OR ANY USE MADE OF THE PRODUCTS, EVEN IF SMARTRAC HAS BEEN ADVISED OF OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. SMARTRAC SHALL HAVE NO LIABILITY OF ANY KIND WHATSOEVER FOR ANY THIRD PARTY'S PRODUCTS OR ELEMENTS INCORPORATED INTO THE PRODUCTS, INCLUDING WITHOUT LIMITATION INTEGRATED CIRCUIT CHIPS AND OPERATING SYSTEMS, ALSO INCLUDING ANY RELATED SOFTWARE.

14.4 The provisions of this clause shall apply to the full extent permitted by law.

14.5 Any exclusion or limitation of liability in SMARTRAC's favour shall also extend to the personal liability of its employees, staff, representatives and vicarious agents.

14.6 As SMARTRAC may engage one or more third parties in the performance of any Contract any limitation of liability by such a third party may be invoked by SMARTRAC against Buyer.

## 15. Intellectual Property ("IP") and Indemnification

15.1 Any software or other IP included or embedded in Products sold or delivered otherwise to Buyer does not convey to Buyer any license or rights of use of such software or IP except as necessary a limited, nonexclusive, non-transferable right to use and sell the Product. Buyer will not reverse engineer, disassemble or analyze any Products received from SMARTRAC itself, nor assign any third party to do so.

15.2 All rights, title and interest in any development, adaptation, modification, enhancement or improvement of any nature performed by SMARTRAC either alone or in collaboration with Buyer or any third parties, pursuant to Buyer's specifications or requirements or otherwise, shall be the exclusive property of SMARTRAC and may also be used in other products, designs and projects of SMARTRAC.

15.3 The Products of SMARTRAC's design will be sold free of any rightful claim of infringement of any patent. Subject to the limitations and exclusions set forth below, SMARTRAC will indemnify and hold Buyer harmless from and against any and all losses, liabilities, damages or expenses suffered or incurred by Buyer arising out of any allegation by a third party that, if true, would constitute a breach of the foregoing warranty.

15.4 For this indemnification to apply the Buyer shall give written notice to SMARTRAC of all relevant facts and copies of all relevant documents and communications within five (5) business days after the Buyer itself received notice of any patent or other IP infringement claim, demand, assertion, or offer to

license involving the Product ("Claim") or the commencement of any legal action against the Buyer for such infringement ("Action"), whichever occurs first.

15.5 Notwithstanding anything herein to the contrary, SMARTRAC will not indemnify the Buyer if, (i) a Claim or Action is based on any modification of or addition to the Product, by anyone else than SMARTRAC or (ii) a Claim or Action is based on any combination of the Product with or incorporation of the Product into any other product not supplied by SMARTRAC or (iii) a Claim or Action is based on any third party's products or elements incorporated into the Products, including without limitation integrated circuit chips, operating systems, and any related software, or (iv) the Product is used in a manner alleged to infringe any method claim other than one which is necessarily infringed by use of the Product or (v) a Claim or Action arises from a Product that was a custom-made design according to specifications furnished by the Buyer or (vi) the Buyer fails to comply with any aspect of the indemnification procedures specified above or (vii) the Claim is made after a period of one (1) year from the date of Delivery of the Product, or (viii) the Claim arises from the Buyer's manufacture, use, sale, offer for sale, importation or other disposition promotion of the Product after SMARTRAC's notice to the Buyer that the Buyer should cease any such activity, provided such notice shall only be given if the Product is under SMARTRAC's opinion likely to become the subject of such a Claim of infringement.

15.6 SMARTRAC shall have the right to assume exclusive control over the defense of any Claim or Action, with a counsel selected by SMARTRAC and Buyer shall fully cooperate in this endeavour. Therefore SMARTRAC, at its sole discretion, may decide to (i) obtain a license or other right from one or more third parties to enable continued distribution and/or use of the Product, (ii) substitute with a functionally similar, but non-infringing Product, (iii) modify the Product, so it becomes non-infringing, or (iv) terminate any agreement related to such Products and refund the purchase price (less reasonable depreciation for any period of use). The preceding options in this paragraph state SMARTRAC's entire liability for such an infringement. SMARTRAC's liability under Section 15 is also subject to the terms and limitations as set forth in Section 14 ("limitation of liability") above.

## 16. Applicable law and settling of disputes

16.1 **Law:** Both the GSC and any Contract are governed by and interpreted in accordance with the laws of the State of North Carolina, USA, without regard to its conflict of laws provisions. The provisions of the United Nations Convention on contracts for the International Sale of Goods shall not apply.

16.2 **Mediation; Arbitration:** In case of a dispute arising out of or in connection with the GSC and any Contract, including any question regarding existence, validity or termination, with the exceptions mentioned under par. 16.3, the parties shall endeavour in good faith to resolve such dispute using informal dispute resolution techniques such as mediation, independent expert evaluation or determination or similar techniques agreed by them. If there is no mutual amicable agreement to be found within six (6) weeks, the matter shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the International Chamber of Commerce (ICC) for the time being in force, which rules are deemed to be incorporated by reference herein. The language of the procedure, documentation and award shall be English. The dispute shall be decided by one or more arbitrator(s), appointed according to said rules. The arbitration shall be conducted in Charlotte, North Carolina, USA. The award shall be final and binding on the parties and enforceable in any court of competent jurisdiction. The prevailing party in any action brought in connection with this agreement may recover, in addition to damages, its reasonable attorneys' fees and costs incurred in connection therewith.

16.3 Notwithstanding the aforesaid to the contrary, in any claims for urgent or injunctive or other equitable relief, collection of due payments or claims regarding any kind of IP rights SMARTRAC shall be allowed to immediately undertake legal

proceedings at the state and/or federal courts of the Buyer's domicile, main place of business or any other appropriate court, without the posting of any bond and without prior proceedings such as mediation or arbitration.

## 17. Miscellaneous

17.1 **Rescission:** If a suspension of payment in respect of Buyer is applied for or granted, a petition for Buyer's bankruptcy is filed or Buyer is declared bankrupt, Buyer makes an arrangement with its creditors or takes any other steps with a view to restructuring its debts, Buyer's control over its assets is lost or restricted in any other way, Buyer ceases its operations or transfers them to another country, Buyer is wound-up or dissolved, SMARTRAC may rescind the Contract in whole or in part with immediate effect and without prejudice to any other rights or remedies SMARTRAC may have and without being liable for any compensation.

17.2 **Headings:** are inserted for convenience of reference only and are not intended to be part of and shall not limit or affect the meaning of each Section.

17.3 **Assignment and subcontracting:** SMARTRAC may engage any Affiliate and/or one or more third parties in the performance of any Contract by assignment, subcontract or otherwise.

17.4 **Communication:** Unless expressly otherwise agreed, notices and other communications between the parties shall be in the English language, which shall be controlling in all respects. Unless written form is stipulated electronic mail is sufficient. Written form is mandatory for modifications, amendments and rescission of contract or any waiver of rights. Any representation, warranty, course of dealing or trade usage not specifically contained or referenced shall not be binding on SMARTRAC.

17.5 **Waiver:** SMARTRAC does not waive its rights, powers and discretions by failing to exercise, only exercising in part, or delaying in the exercise of its rights. If not expressly otherwise stipulated in the Contract or herein any action or law suit arising out of breach of the Contract by SMARTRAC must be instituted within twelve (12) months from the date the cause of action has accrued and in any case within twelve (12) months from the date of Delivery of the Products. If such action is not instituted within said period, the Buyer shall be deemed to have waived its rights arising out of such breach.

17.6 **Entire Agreement:** The GSC together with any applicable Contract for the Products contains the complete and exclusive statement of the terms of agreement of the parties with respect to the subject matter thereof and supersedes all prior understandings, representations and warranties, whether written or oral.

17.7 **Survival:** Any provisions and obligations which by their nature are intended to survive terminations, including without limitation Sections 4, 5, 9 and 13-17, shall survive termination.

17.8 **Conflicts:** In the event of a conflict or ambiguity the provisions of the Contract other than this GSC shall prevail over the provisions of this GSC.

17.9 **Modifications:** SMARTRAC reserves the right to modify and amend the GSC at any time. Such modified GSC shall apply to all Contracts made by Buyer after the date of notice by SMARTRAC to Buyer of such modified GSC.

17.10 **Severability:** Any provision hereof which is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions hereof or thereof. To the extent that, even after giving effect to the preceding sentence, any provision (or part thereof) is prohibited or unenforceable in accordance with its terms, the parties shall use their best efforts to negotiate, in good faith, a substitute, valid and enforceable provision which most nearly reflects the parties' intent in entering into this agreement.