

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

## 1. Definitions

**Affiliate** shall mean any SMARTRAC entity according to §§ 15ff. German AktG.

**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.

**IP** shall mean Intellectual Property

**PO** shall mean a purchase order submitted by Buyer.

**Products** shall mean any goods to be supplied and/or services to be 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 Europe, Middle East and Africa region entering in a Contract.

**Warranty Period** shall mean a period of twelve (12) months from Delivery if SMARTRAC is not liable as the result of a defect pursuant to clause 13.3 or 13.4. The statutory limitation period shall apply to such claims.

## 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 Terms and conditions of Buyer shall not be applicable. 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; Performance

3.1 Unless otherwise agreed, SMARTRAC's offers are not binding and subject to confirmation. The Buyer's PO is deemed to be a legally binding invitation to enter into the Contract. SMARTRAC is entitled to accept the Buyer's offer within a period of 14 calendar days. The Contract only comes into force if SMARTRAC has confirmed the PO by issuing a written order confirmation or if SMARTRAC starts executing the Contract.

3.2 SMARTRAC reserves the right to make minor technical modifications to its offer after the Contract has been concluded, in particular if these are technical improvements, provided they can be reasonably expected of Buyer.

3.3 Unless incorporated in the Contract by express reference, SMARTRAC shall have no responsibility for the 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.

3.4 Place of performance shall be SMARTRAC's premises.

## 4. Prices; Payment; Default

4.1 All prices quoted by SMARTRAC are based on Delivery "Ex Works" (EXW - INCOTERMS 2010) SMARTRAC's premises and exclusive of VAT, as well as any other and similar taxes, levies and duties.

4.2 If a performance deadline of more than four (4) months has been agreed from the date the PO was confirmed until execution of the performance, SMARTRAC is entitled to pass on any increases in costs which have occurred in the meantime to Buyer accordingly. The same shall apply if a performance deadline of less than four (4) months was agreed, but SMARTRAC will only be able to execute performance later than four (4) months after the order has been confirmed for reasons for which Buyer is responsible.

4.3 In case no payment provisions should be provided for in the Contract, payment shall be made in EUR within thirty (30) days from the date of invoice and without any deductions. Payment shall be considered effected when the applicable funds are collected and fully available to SMARTRAC.

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

4.5 In the event Buyer fails to comply with the terms of payment under these GSC or any Contract, in the event of imminent illiquidity or any other material deterioration in the Buyer's financial situation, SMARTRAC may withhold its performance under any or all outstanding Contracts until due payments are made in full and suspend, delay or cancel any credit under any or all outstanding Contracts. Such rights shall be in addition to, and not in lieu of any other rights and remedies available to SMARTRAC.

4.6 Irrespective of Buyer's instructions any transfer on overdue payments by Buyer shall be applied first to accrued but unpaid interest and then to principal.

## 5. Retention of Title

5.1 Although possession of Products may change in the course of sales title to Products sold shall remain vested in SMARTRAC until the purchase price for 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 Products.

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

5.3 Any processing or alteration of the Products which are in the ownership of SMARTRAC by Buyer or a third party commissioned by Buyer is carried out on behalf of SMARTRAC. If Buyer acquires the sole title of the new item created by the processing or alteration, it is deemed to have been agreed that Buyer hereby transfers joint title to SMARTRAC in the ratio of the value of the Products in the ownership of SMARTRAC to the value of processing or alteration and SMARTRAC hereby accepts this transfer. Buyer shall retain sole or joint title which has thus been created for SMARTRAC in trust free of charge. If the Products in the ownership of SMARTRAC have not been inseparably combined or mixed with other items or otherwise processed or altered since Delivery, their value at the time of combining, mixing, processing or alteration is deemed to be the amount which SMARTRAC billed for the Products including statutory value-added tax.

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 assigns and SMARTRAC in turn accepts the assignment of Buyer's claims arising from such sales to secure SMARTRAC's claims. Buyer has

the right to collect any receivables assigned. The right to collect shall lapse if Buyer is in default with payment, becomes illiquid or there is a deficiency in the Buyer's performance. If the realizable value of the securities exceeds the value of the claims to be secured by more than 10 % in total, SMARTRAC shall release securities - at its discretion - if so requested by Buyer.

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 is made, 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. If this is not possible, Buyer assigns and SMARTRAC in turn accepts the assignment of any of Buyer's insurance claims regarding the Products.

5.7 If the reservation of title is invalid or unenforceable under the law of the country in which the Products are located, the security which corresponds most closely to the law of that country shall be deemed agreed. Buyer shall assist and support SMARTRAC in arranging the security. If under the law of the country in which the Products are located this reservation of title depends on its registration, e.g. in public registers in the Buyer's home country, SMARTRAC shall be entitled and authorized by Buyer to effect registration at Buyer's expense. Buyer undertakes to provide all the necessary cooperation services free of charge.

## 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 behalf of and at the expense of Buyer.

6.2 SMARTRAC may supply the Products in partial shipments if this can be reasonably expected of Buyer 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 or the passage or non-passage of title, the risk of damage to or loss of Products always passes to Buyer on dispatch or Delivery as Products leave SMARTRAC's control at this point in time. If dispatch or Delivery is delayed owing to reasons for which Buyer is responsible, risk shall pass to Buyer upon receipt of notification of readiness for dispatch.

## 7. Delivery Time; Delay in Delivery

7.1 Any dates indicated by SMARTRAC are best possible estimates but are generally non-binding.

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

7.3 If Delivery of Products fails for reasons for which Buyer is responsible, SMARTRAC, without prejudice to any other right or remedy it may have, may store Products at the risk and cost of Buyer.

7.4 Observance of delivery periods is subject to SMARTRAC having been able to obtain the correct supplies in due time, provided SMARTRAC is not responsible for the delay in supplies by SMARTRAC's suppliers. SMARTRAC shall inform Buyer as soon as possible of impending delays.

7.5 In the event of a delay in Delivery by SMARTRAC, Buyer can demand not only delivery but also reimbursement of any loss incurred by the delay in compliance with statutory provisions. However, provided SMARTRAC has not acted with intent or gross negligence, this claim is restricted to 0.5 % of the value of the Delivery concerned per week of delay and to a maximum of 5 % of the value of the Delivery concerned. Buyer's right to withdraw from the Contract and/or to compensation owing to non-fulfillment pursuant to (12) shall remain unaffected.

## 8. Duty to Inspect

8.1 Reference to § 377 German Commercial Code (HGB) is made. Buyer is obliged to examine promptly and without undue delay upon arrival of the Products at its premises or at the premises of a third party it specifies, using due diligence, concerning both quality (obvious damages) and quantity. Buyer shall inform SMARTRAC in writing of any defects without undue delay at the latest, however, within five (5) working days after Delivery. Buyer shall notify SMARTRAC in writing of any defects which cannot be recognized during the proper incoming goods inspection without undue delay at the latest, however, within three (3) working days after Delivery. If Buyer fails to carry out a proper inspection and/or fails to give notification, SMARTRAC shall not be liable for defects which have not been reported. This shall not apply if SMARTRAC fraudulently concealed the defect or guaranteed a specific quality.

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 only.

## 9. Confidentiality

9.1 Buyer shall treat as confidential any commercial and technical information, as well as any offers or other documents which SMARTRAC provides that are not generally known and which have come to its knowledge by virtue of its business relationship with SMARTRAC and shall not disclose such information to any third party, without SMARTRAC's prior written consent, nor use it for other purposes as intended when given.

9.2 An exception hereto is information which Buyer already had knowledge of before contractual negotiations began, which is in the public domain through no fault or action on the part of the Buyer or which will or must be disclosed owing to statutory obligations or the instruction from an authority or court.

9.3 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 the independent chartered accountants may reasonably request. In the event of a breach of the provisions of Section 10.1 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. Warranty

12.1 SMARTRAC warrants to Buyer that the Products sold will be free from defects in material and workmanship and comply with the requirements and standards agreed to in the Contract during the Warranty Period. SMARTRAC does not assume any further

warranty, in particular with regard to the suitability of the Products for a specific purpose.

12.2 SMARTRAC declines any warranty for defects arising out of materials or specifications provided by or whose design is stipulated or specified by or on behalf of Buyer.

12.3 Sample Products are dispatched without any warranty.

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

12.5 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 and provided that these minor modifications and changes can be reasonably expected of Buyer.

12.6 When considered necessary by SMARTRAC Buyer shall allow SMARTRAC or its representatives the inspection of the whole shipment including both the defective or non-conforming Products as well as the non-defective or conforming Products. In case Buyer denies the inspection of the whole shipment SMARTRAC's liability shall not exceed the net invoice value of the defective or non-conforming Products that SMARTRAC has had the possibility to inspect.

12.7 In the event of legitimate claims for defects, SMARTRAC may choose subsequent performance by remedying the defect or may supply a non-defective Product. This shall have no effect on the right to refuse the type of subsequent performance chosen pursuant to statutory requirements. Subsequent performance does not include removal of the defective Product or re-installation of the non-defective or repaired Product or reimbursement of the associated costs if SMARTRAC's original obligations did not include installation. However, this does not apply in the event of the Delivery of the Products to consumers or resellers who directly or indirectly sell to consumers. SMARTRAC shall bear the costs incurred for inspection and subsequent performance, in particular costs of transport, in-transit, work and materials if a defect of the Products actually exists. If the Buyer's demand to have a defect remedied turns out to be unjustified, SMARTRAC may demand compensation from Buyer for the costs incurred unless Buyer bears no responsibility in this respect.

12.8 For valid rejections of Products or valid Warranty claims SMARTRAC will bear the reasonable costs of carriage. Before returning Products Buyer shall ask for SMARTRAC's prior written authorization. Buyer is obliged to follow any instructions given by SMARTRAC with respect to the storage and return of such Products.

12.9 EXCEPT AS PROVIDED HEREIN, NO OTHER WARRANTY, EXPRESS OR ARISING BY OPERATION OF TRADE USAGE OR OTHERWISE IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR, INTEGRATION WITH RESPECT TO THE PRODUCTS SHALL EXIST.

### 13. Limitation of Liability

13.1 SMARTRAC's obligations as set forth in this Article 13 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 by others than SMARTRAC.

13.2 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.

13.3 SMARTRAC shall be liable for intent and gross negligence and intent and gross negligence on the part of its legal representatives and vicarious agents. If SMARTRAC, its legal representatives or vicarious agent has/have not acted with intent, liability is restricted to foreseeable damage typical for this type of contract. SMARTRAC shall be liable in the event of negligent injury

to life, limb or health, unless SMARTRAC is not responsible therefor. SMARTRAC shall also be liable in the event of willful failure to disclose a defect or the assumption of a guarantee. SMARTRAC shall furthermore be liable if such duties which are material for fulfilling the contract and on which the Buyer relies or is entitled to rely on being fulfilled, unless SMARTRAC and its legal representatives or vicarious agents are not responsible therefor. If SMARTRAC, its legal representatives or vicarious agents have not acted with intent, liability is restricted to foreseeable damage typical for this kind of contract.

13.4 The limitation of liability does not apply to cases of mandatory statutory liability, including without limitation liability under the German Product Liability Act (Produkthaftungsgesetz).

13.5 Otherwise, liability is excluded irrespective of the legal grounds. Buyer shall notify and consult SMARTRAC comprehensively and without undue delay if it intends to seek legal recourse in accordance with the above-mentioned provisions.

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

### 14. IP and IP-Indemnification

14.1 Any software or other IP included or embedded in Products sold or delivered otherwise by 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.

14.2 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.

14.3 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.

14.4 For this indemnification to apply 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 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 Buyer for such infringement ("Action"), whichever occurs first.

14.5 Notwithstanding anything herein to the contrary, SMARTRAC will not indemnify Buyer if, (a) a Claim or Action is based on any modification of or addition to the Product, by anyone else than SMARTRAC or (b) 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 (c) 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 (d) 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 (e) a Claim or Action arises from a Product that was a custom-made design according to specifications furnished by Buyer or (f) Buyer fails to comply with any aspect of the indemnification procedures specified above or (g) the Claim is made after a period of one (1) year from the date of Delivery of the Product, or (h) the Claim arises from Buyer's manufacture, use, sale, offer for sale, importation or other disposition promotion of the Product after SMARTRAC's notice to Buyer that 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 or infringement.

14.6 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 endeavor. Therefore SMARTRAC, at its sole discretion, may decide to obtain a license or other right from one or more third parties to enable continued distribution and/or use of the Product, substitute with a functionally similar, but non-infringing Product, modify the Product, so it becomes non-infringing. The preceding options in this paragraph state SMARTRAC's entire liability for such an infringement. SMARTRAC's liability under this Section 14 is also subject to the terms and limitations as set forth in Section 13 ("limitation of liability") above.

## 15. Applicable law and settling of disputes

15.1 **Law:** Both the GSC and any Contract are governed by and interpreted in accordance with the laws of the Federal Republic of Germany, without regard to its conflict of laws' provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

15.2 **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 Section 15.3, the parties shall endeavor in good faith to mutually resolve such dispute, where necessary with the aid of a mediator. In the event the parties cannot reach a settlement, all disputes arising out of or in connection with these GSC, a Contract or the validity thereof shall be finally settled in accordance with the Arbitration Rules (*Schiedgerichtsordnung*) of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law. The version of the Arbitration Rules as amended from time to time shall be deemed part of these GSC. The arbitral tribunal shall be comprised of a sole arbitrator. The seat of the arbitration is Stuttgart, Germany. The language of arbitration shall be English unless there are only German speakers at the arbitration in which case the language shall be German. 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.

15.3 Notwithstanding the aforesaid to the contrary, in any claims for urgent or injunctive relief, collection of due payments or claims regarding any kind of IP rights SMARTRAC shall be allowed to immediately undertake legal proceedings at the competent courts of 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.

## 16. Miscellaneous

16.1 **Headings:** Are inserted for convenience of reference only.

16.2 **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 as SMARTRAC may see fit.

16.3 **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.

16.4 **Entire Agreement:** The GSC together with any applicable Contract for the Products contain 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.

16.5 **Offset:** Buyer may only offset against remuneration claims by SMARTRAC with any undisputed counterclaims or counterclaims determined without further legal recourse arising from the same contractual relationship. The same shall apply to exercising a right of retention. Buyer may only exercise a right of retention if and to the extent it arises from the same contractual relationship.

16.6 **Survival:** Any provision and obligation which by their nature are intended to survive terminations, including without limitation Sections 4, 5, 9 and 12-16 shall survive termination for any cause.

16.7 **Conflicts:** In the event of an inconsistency or ambiguity the provisions of the Contract other than this GSC shall prevail over the provisions of this GSC.

16.8 **Severability:** Any provision of the GSC is severable. In case a provision should be prohibited or unenforceable it 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 any provision (or part thereof) cannot be enforced in accordance with the stated intentions of the parties they 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. Same applies mutatis mutandis to unintended blanks.