

# **SUMITOMO DRIVE TECHNOLOGIES** **PURCHASING TERMS AND CONDITIONS**

## **I. Purchase order**

A purchase order shall only be deemed validly placed on behalf of Sumitomo Drive Technologies if it is issued in writing and signed by a duly authorized representative of Sumitomo Drive Technologies. Electronic purchase orders shall only be valid if so provided in a separate contract between the Supplier (as defined herein) and Sumitomo Drive Technologies. A purchase order transmitted by fax or e-mail shall be deemed to be a written purchase order. Agreements made orally, either directly or by telephone, are only valid if confirmed in writing. On acceptance of the purchase order, these General Conditions shall form part of the contract to which the purchase order relates or which results from the acceptance of the purchase order. They shall also apply for all future supply contracts between the supplying party (the “**Supplier**”) and Sumitomo Drive Technologies, even if the application of these General Conditions is not expressly agreed in connection with such future supply contracts. Sumitomo Drive Technologies expressly rejects the standard or special terms and conditions of sale of the Supplier, regardless of whether these are communicated prior to or after the time of dispatch of the purchase order. Such terms and conditions of sale of the Supplier shall never form part of the contract, unless expressly agreed in writing by Sumitomo Drive Technologies. For avoidance of doubt, these General Conditions shall apply even if Sumitomo Drive Technologies accepts delivery from or makes payment to the Supplier without any reservations being expressed, despite being aware of the existence of conditions which conflict with or deviate from these General Conditions.

## **II. Acceptance of purchase order**

The Supplier shall give prompt written confirmation (to be duly dated, approved and signed) of each and every order received from Sumitomo Drive Technologies. Should Sumitomo Drive Technologies not receive such written confirmation within three (3) business days from the dispatch of the order, Sumitomo Drive Technologies may opt to notify to the Supplier that the order is void. Any modification or additions to the contents of Sumitomo Drive Technology purchase order shall be separately indicated as such in the written reply of the Supplier to Sumitomo Drive Technologies and shall be considered as a rejection of the purchase order in conjunction with a new quotation on the part of the Supplier. Any drawings, diagrams or other documents pertaining to the purchase order remain the property of Sumitomo Drive Technologies, who retains all property rights (including the copyright) relating to said documents. The Supplier shall be responsible for verifying the purchase order for consistency between the order text and the documents in his possession (drawings, Sumitomo Drive Technologies Quality Standards, regulations, etc.) and, in the case of discrepancies, make appropriate inquiries with Sumitomo Drive Technologies. This applies in particular to the Index specified for the relevant drawing in the purchase order. If the Supplier does not accept the purchase order, these documents shall be returned to Sumitomo Drive Technologies free of charge and without delay. In such case, the Supplier shall refrain from making any use of the information disclosed in the documents and, if the supplier so requests, confirm that all copies have been destroyed and the information is not retained in any form whatsoever.

## **III. Prices**

The agreed contract prices are fixed prices in \$US Dollars. Unless otherwise agreed, the prices are to be understood as FOB Ship Point (INCOTERMS 2010). Sumitomo Drive Technologies shall notify the supplier of which shipping companies are designated as approved carriers. The delivery address shall be specified in the respective purchase order. Unless otherwise agreed in writing, no charge shall be made to Sumitomo Drive Technologies for the drafting of quotations, project planning documentation or other planning work. An offer irrevocably binds the Supplier for a period of 60 days from the date of its receipt by Sumitomo Drive Technologies.

## **IV. Delivery time**

The agreed delivery time (as per purchase order) commences on the day on which the purchase order is placed. In respect of the supply of goods, the delivery date refers to the date the goods (accompanied by the full documentation, including as the case may be inspection reports and operating and safety instructions) are received at Sumitomo Drive Technology plant or consignee. For avoidance of doubt any preparation time required in connection with the purchase order, such as the required time for packaging and transportation, shall be taken into consideration by the Supplier. In respect of services, and unless agreed to the contrary, the delivery date refers to the date of receipt in the Sumitomo Drive Technologies premises or facility designated by Sumitomo Drive Technologies (subject to delivery of the full documentation required in connection with the performance of such services). If the Supplier defaults on his delivery commitments, Sumitomo Drive Technologies is entitled, after granting a reasonable grace period for performance which will under no circumstances exceed 7 calendar days, to take remedial action,

either internally or through the agency of third parties, at the expense of the Supplier, and to demand compensation for any and all damages in lieu of performance; such remedy shall be without prejudice to any rights and remedies of Sumitomo Drive Technologies under applicable laws and regulations or on a contractual basis.

If the Supplier is in possession of documents required by Sumitomo Drive Technologies or third party for performance of the contractual obligation, the Supplier shall transfer these promptly to Sumitomo Drive Technologies free of charge. Insofar as intellectual property rights impede Sumitomo Drive Technologies or the relevant third party in delivery/performance, the Supplier shall be obliged to promptly procure a release from said rights. If the Supplier defaults on his delivery commitments, he shall pay a contractual penalty amounting to 0.2% per calendar day of the delay, up to a limit of 10% of the total value of the order. Such remedy shall be without prejudice to any rights and remedies of Sumitomo Drive Technologies under applicable laws and regulations or on a contractual basis, including the right to obtain full compensation for any damage which is proven to have been actually incurred by Sumitomo Drive Technologies. In particular, if as a result of the failure of the Supplier to meet the agreed delivery date, Sumitomo Drive Technologies incurs contractual penalties, Sumitomo Drive Technologies shall have the right to charge the Supplier for the amount of said penalties. Acceptance of delayed delivery or performance without express reservation of rights by Sumitomo Drive Technologies does not imply a waiver by Sumitomo Drive Technologies of any rights or remedies under applicable laws and regulations or on a contractual basis arising from the delayed delivery or performance. If delivery was contractually agreed for a specific calendar date and was not made by such date, the delay shall be deemed to have been duly established without any need for Sumitomo Drive Technologies to give notice of default or grant a period of grace. For delivery dates specified in terms of calendar weeks, the delivery date is deemed to be the Friday of the week in question. If, for whatever reason, the Supplier has reason to doubt his ability to meet the agreed delivery or performance date, he/she is obliged to inform Sumitomo Drive Technologies immediately of these circumstances and the expected duration of the delay in writing. The Supplier shall take all necessary measures, including but not limited to special shipments, additional personnel, overtime and night-work, multiple shift operation, weekend and public holiday work, in order to meet the original delivery date. Sumitomo Drive Technologies shall incur no additional costs as a result of these measures.

#### **V. Further delivery modalities**

Bills of lading and delivery notes shall include the Sumitomo Drive Technology Purchase Order number, line number, part descriptions, idnumber, and the customs tariff number of the Supplier and shall accompany the relevant delivery. Insofar as no conflicting dispatch and shipping provisions are stipulated in the purchase order, delivery is to be carried out FOB shipping point (INCOTERMS 2010). In the case of CFR or CIF Supplier conditions, the Supplier shall contact the Sumitomo Drive Technology Buyer of Record at the Procurement Department (as identified on the purchase order) for instructions. The Suppliers shall provide the following information:

- number of containers
- weight per containers and total
- measurement of the container
- purchase order number and line item
- place of loading for the goods

The documentation shall be addressed in copy to the person in charge at the purchasing department of Sumitomo Drive Technologies. (as identified in the purchase order) as well as the shipping department of Sumitomo Drive Technologies. The Supplier shall allow sufficient time (with a minimum of 5 working days) for loading and dispatch when fixing the staging date. Sumitomo Drive Technologies shall only accept the quantities or numbers of units ordered. Over-deliveries, under-deliveries or early deliveries are only permissible after consultation with and prior written confirmation of Sumitomo Drive Technologies. With respect to supply arrangements based on weight, the weights specified in Sumitomo Drive Technologies drawings shall apply. If Sumitomo Drive Technologies accepts a supply arrangement on the basis of actual weight, the values established by Sumitomo Drive Technologies during the goods receiving inspection shall determine the quantities, weights and measurements. Any evidence to the contrary must be produced by the Supplier. The Supplier is obliged to use environmentally friendly packaging which can be reused or disposed of at low cost. All necessary information regarding the contents, storage and transportation shall be permanently attached to the packaging in an easily visible position. In particular, the contents shall be clearly identified on the outside of the packaging by means of the Sumitomo Drive Technology Idnumber, purchase order number and line item(s). The Supplier shall observe all regulations relating to the shipping of dangerous goods. The location of the passing of risk shall be the delivery address specified by Sumitomo Drive Technology in the purchase order, unless a different location applies pursuant to the agreed upon INCOTERM. With respect to the supply of services, the place of performance shall be specified by Sumitomo Drive Technologies in the purchase order, unless agreed otherwise.

#### **VI. Insurance**

Supplier represents that it has and, for so long as the contractual relationship with Sumitomo Drive Technologies is in force or is capable of having consequences, that it shall maintain at its own cost and expense, from a reputable

insurance company, adequate and sufficient insurance for the type of business engaged in by the Supplier in compliance with all applicable regulations and in accordance with the standard expected for a company conducting similar activities. These insurance policies shall as a minimum provide coverage for comprehensive, general and product liability. Supplier shall provide Sumitomo Drive Technologies with certificates of insurance evidencing such coverage, upon Sumitomo Drive Technologies first written request. With respect to supplies to be made by the Supplier, transportation insurance shall be contracted by Sumitomo Drive Technologies. In the case of transportation by a shipping company, the shipping company shall be informed by the Supplier that Sumitomo Drive Technologies is a customer exempt from forwarding, logistics and warehousing insurance (CMR insurance).

## **VII. Payment**

Payment shall be made in accordance with the terms and conditions specified by Sumitomo Drive Technologies in the purchase order. Unless otherwise agreed, payment shall be made by means of a payment method to be selected by Sumitomo Drive Technologies within 60 days after the end of the month of delivery and acceptance of the goods or services. The relevant period for payment shall commence from either the agreed delivery date or the actual delivery date, whichever is the later. The period of payment shall not commence, however, before receipt of an invoice. Payments governed by discount provisions are subject to performance of the contractual obligations. All invoices shall be submitted to the address specified in the purchase order, immediately after delivery has been carried out. In addition to the order number and order item, the invoices shall contain the order date, the delivery note number, the Sumitomo Drive Technology Identnumber, the country of origin and the customs tariff number. The invoices issued by the Supplier shall meet applicable value added or sales tax regulations.

## **VIII. Warranty**

### **VIII.1. Warranty provisions**

The delivery items supplied by the Supplier shall be :

- (i) new and of prime merchantable quality,
- (ii) free of any apparent and/or hidden defects or damage incurred during the transport and/or delivery operations,
- (iii) strictly in accordance the technical characteristics specified in Sumitomo Drive Technologies purchase order, as well as the technical documentation, regulations, the VDE regulations, DIN/ISO Standards, Sumitomo Drive Technology quality Standards, paint specifications and drawings, which are all included in the contractual requirements regarding the properties of the delivery items,
- (iv) strictly in conformity with US laws and regulations (including equipment safety law and accident prevention regulations) as well as other laws and regulations which are relevant to the transaction (including the laws of the country of the Sumitomo Drive Technology end customer, insofar as this has been disclosed in the purchase order) and orders from the competent authorities, the state of the art, good workmanship, and the relevant state of the art,
- (v) fully meeting the normal requirements as to usability, reliability, life cycle, as well as the purpose and destination of which the Supplier has knowledge or of which it should reasonably have knowledge (it being understood that the Supplier shall be deemed to have made careful inquiries about such purpose and destination of the supplies),
- (vi) fit for the particular purposes intended by Sumitomo Drive Technologies; and
- (vii) free from asbestos.

For the avoidance of doubt, the Supplier's warranty hereunder shall fully take into account the general requirements of the gear manufacturing industry, including if applicable for windmill applications. Furthermore, the Supplier shall be liable, in all cases, for defects resulting from design faults, manufacturing faults or faulty instruction as well as imperfection. Without prejudice to the above, all machinery shall meet and be certified to meet all applicable legal requirements, including the requirements of the current Machinery Directive 98/37/EC and, as from its entry into effect, the revised Machinery Directive 2006/42/EC, and any subsequent adaptations thereof. By accepting the purchase order, the Supplier confirms that the delivery items shall fully comply with the requirements of Sumitomo Drive Technologies and with the warranty set forth here above.

### **VIII.2. Warranty Period**

The Supplier's warranty hereunder shall expire 2 years after successful completion of commissioning at the Sumitomo Drive Technology end customer's site, with a maximum of 3 years after the date of delivery. The date of commencement of the warranty is the date of defect-free receipt of goods by Sumitomo Drive Technologies or the date of successful commissioning at the end customer's site. In case the Supplier offers a standard warranty period which is longer than the period referred to above, the applicable warranty period shall be extended to such standard warranty period. With respect to delivery items intended for windmill applications, the term "end customer's site" refers to the end customer's windmill site.

### **VIII.3. Liability and Remediation**

Supplier shall be liable for any and all damages and costs incurred by Sumitomo Drive Technologies due to any non-conformity whatsoever to the provisions of this Clause VIII (each a "**Defect**"). The Supplier undertakes to remedy, within a short period of time as reasonably determined by Sumitomo Drive Technologies (which shall under no

circumstances exceed 14 calendar days however), any Defect occurring during the warranty period referred to in Clause VIII.2. At Sumitomo Drive Technologies discretion (and without prejudice to any other rights and remedies of Sumitomo Drive Technologies under applicable laws and regulations or on a contractual basis), remedial action to be taken by the Supplier may be either the elimination of Defects that have occurred or the delivery of replacement items without defects. The costs incurred as a result of remedial action, in particular transportation costs, travelling expenses, development costs, disassembly and re-assembly work and other work and material costs, shall be borne by the Supplier. If, despite the setting of a reasonable deadline, the Supplier fails to meet his contractual obligations, Sumitomo Drive Technologies is entitled to claim, at his discretion, specific performance or damages instead of performance. This does not affect the right to discount. The warranty shall also cover parts manufactured or delivered by sub suppliers. For the avoidance of doubt, if claims are made against Sumitomo Drive Technologies for breach of local government safety regulations, or for a breach of domestic or foreign product liability regulations on the grounds of a defect in the product, either actual or presumed, that can be attributed to the goods and services of the Supplier, Sumitomo Drive Technologies is entitled to claim compensation from the Supplier for any damages and/or expenses incurred.

#### **VIII.4. Supplier's quality management system and Sumitomo Drive Technologies goods receiving inspection**

The Supplier warrants that he/she has and maintains a quality management system and agrees that the goods receiving inspection carried out by Sumitomo Drive Technologies may be limited to a mere check for obvious (i.e., directly visible) damage and obvious (i.e., directly visible) deviations in terms of identity and quantity (provided that Sumitomo Drives Technologies reserves the right, to be exercised at his discretion, to conduct a more extensive goods receiving inspection). The conduct of such goods receiving inspection or the absence thereof shall under no circumstances limit Sumitomo Drive Technologies rights in relation to defects. Sumitomo Drive Technologies shall, as soon as reasonably possible, give notice of the detection of defects in the course of his normal handling processes. Furthermore, Sumitomo Drives Technology shall give notice of defects as soon as these are discovered in the normal course of business. The Supplier waives any objections it may have to the late notice of defects (or rights which it might be able to derive from such late notice).

#### **IX. Discovery of material defects during processing by the Supplier**

If, during processing by the Supplier, material defects are discovered, Sumitomo Drive Technologies must promptly be notified thereof by the Supplier. In such case, Sumitomo Drive Technologies shall have the right to decide whether or not the processing of the part should be continued. Sumitomo Drive Technologies must be notified immediately of rejects caused by incorrect or improper processing by the Supplier. In such case, the Supplier shall request replacement castings from Sumitomo Drive Technologies.

#### **X. No reservation of title; rights of third parties**

All deliveries shall be free from reservation of proprietary rights and rights of third parties. If, notwithstanding the above, the delivery items are supplied under a claimed reservation of proprietary rights, acceptance of the delivery items in whichever manner shall not constitute recognition of said claimed reservation of proprietary rights. In the case of a violation of the rights of third parties such as but not limited to patents, licenses and trade mark rights, the Supplier shall hold harmless and defend Sumitomo Drive Technologies from and against any and all claims, damages and expenses arising from said violation, insofar as the violation is attributable to the Supplier.

#### **XI. Spare parts**

The Supplier shall ensure that spare and wearing parts will continue to be manufactured and supplied for a period of 20 years in accordance with the most recent price agreements that have been entered into with Sumitomo Drive Technologies.

#### **XII. Documentation to be provided by Supplier**

The documentation required to be supplied by the Supplier shall be in English. This documentation shall also be provided to Sumitomo Drive Technologies, free of charge, as an electronic PDF file for use in overall final product documentation. Insofar as Sumitomo Drive Technology has authorized the use of drawings, calculations and other documents, this authorization shall not relieve the Supplier of his sole responsibility. This also applies in the case of suggestions, recommendations and other cooperation on the part of Sumitomo Drive Technology. Furthermore Sumitomo Drive Technology assumes that the delivered products have been manufactured within an effective and demonstrable quality system, preferably one confirming to the requirements of the ISO 9000/14000 standards. Sumitomo Drive Technologies shall be entitled to inspect the production process and verify the quality system, on short notice to the Supplier at Supplier's site. By no means shall the Supplier subcontract orders in whole or in part to third parties without prior written permission from Sumitomo Drive Technologies.

#### **XIII. Materials provided to Supplier**

All specifications, drawings, patterns, etc., provided to the Supplier in connection with the delivery items, and any

drawings to be produced in accordance with special specifications, etc., shall not be used, reproduced or disclosed to third parties by the Supplier for any other purpose. The Supplier undertakes to treat the purchase order and all related information from the business relation as trade secrets and to treat them with strict confidentiality. Materials, drawings and patterns provided by Sumitomo Drive Technologies (or for which a contribution to the production costs has been agreed or charged to Sumitomo Drive Technologies) shall be handled and stored in an appropriate manner by the Supplier and insured by the Supplier against destruction. The drawings and patterns remain the property of Sumitomo Drive Technologies and shall be identified as property of "Sumitomo Drive Technologies." Such materials, drawings and patterns shall be stored separately free of charge. At the end of every year, a general overview (inventory) of all stored patterns belonging to Sumitomo Drive Technologies shall be drafted in list form and sent unprompted to Sumitomo Drive Technologies. Drawings shall be returned, unprompted, on completion of order processing; patterns shall be made available to Sumitomo Drive Technologies free of charge on request. In case of use in a foundry, any additional equipment mounted must be removed in such a way that correct use of the patterns in another foundry is not impeded. The Supplier shall indemnify and hold harmless Sumitomo Drive Technology in case of a violation of any of the abovementioned obligations.

#### **XIV. Advertising material**

The Supplier may only refer to his business relations with Sumitomo Drive Technologies in advertising materials or similar with the express written authorization of Sumitomo Drive Technologies. The Supplier undertakes to send Sumitomo Drive Technologies a courtesy copy free of charge prior to publication.

#### **XV. Corporate Social Accountability**

Supplier shall not utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of delivery items to or the performance of services for Sumitomo Drive Technologies. Supplier shall cause its subcontractors – to the extent subcontracting is allowed and appropriate – to comply, and to require their personnel to comply, with the provisions of this Clause XV. Without prejudice to the above, Sumitomo Drive Technologies shall have the right to require Supplier to demonstrate that it complies with international corporate social responsibility / social accountability ("CSR") standards, including by:

- requiring the Supplier to submit a certificate of CSR compliance issued by an internationally accredited body (such as SA8000 certification).
- requiring the Supplier to make a CSR self-assessment report and send a copy thereof to Sumitomo Drive Technology.;
- conducting or commissioning, upon reasonable notice to Supplier, a compliance audit in Supplier's premises.
- providing detailed information regarding adherence to the Conflict Materials Act, RoHS, and the California Transparency in Supply Chain Regulations

#### **XVI. General Provisions**

##### **XVI.1. Force majeure**

A failure of performance of their obligations by either party shall not constitute a default by such party, or give rise to any claim for damages against it, if, and to the extent that, such failure of performance is caused by Force Majeure. If a party is unable to perform its duties under this Agreement due to Force Majeure, the other party shall be discharged from its obligations hereunder. If Supplier is affected by Force Majeure, it shall apportion the quantities it is still able to supply by priority to Sumitomo Drive Technologies and its affiliates. The party affected by Force Majeure shall give notice thereof to the other party in writing, promptly upon detection of the impediment constituting Force Majeure and its effect. If such Force Majeure persists for over a period of more than 3 months after the above-mentioned notice, the party not affected by Force Majeure may terminate the Agreement by written notice to be sent to the other party.

##### **XVI.2. Assignment**

No assignment of claims of the Supplier shall be made without the prior written approval of Sumitomo Drive Technologies.

##### **XVI.3. Set off**

The Supplier may set off any amount it owes to Sumitomo Drive Technologies against any amounts owed to it by Sumitomo Drive Technologies, provided such set-off is expressly accepted by prior written consent from Sumitomo Drive Technologies. Sumitomo Drive Technologies may set off any amount Sumitomo Drive Technologies or any of

its affiliates owes to the Supplier, against any amounts owed to them by the Supplier, whether or not the Supplier disputes such amounts.

**XVI.4. Governing Law and disputes**

The contractual relationship between Supplier and Sumitomo Drive Technologies (including these General Conditions) is governed by United States law, excluding however the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG). Any disputes arising in connection therewith that cannot be amicably settled by Sumitomo Drive Technologies and the Supplier shall be submitted to the court of Virginia in the United States.

Edition Date: December 8, 2014