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## **GOMSPACE GENERAL TERMS AND CONDITIONS FOR SUPPLY**

*21 August 2017*

### **PREAMBLE**

1. These General Conditions for Supply (“General Conditions”) shall apply to all supplies of goods (“Products”) from GomSpace A/S, company registration no. 30 89 98 49 (“GomSpace”) to any purchaser (“Purchaser”) (GomSpace and the Purchaser collectively referred to as the “Parties” and individually a “Party”). Modifications of or deviations from these General Conditions must be agreed upon in writing between the Parties.

### **QUOTATIONS AND ORDERS**

2. Any quotation (“Quotation”) made by GomSpace is non-binding. Accordingly, a Quotation shall only constitute an invitation to the Purchaser to make a Quotation by placing an order with GomSpace. Unless otherwise agreed in writing a Quotation shall only be valid for a period of 30 days calculated from the posting date of the Quotation.

3. The Purchaser’s order (“Order”) is not binding on GomSpace. A binding contract (“Contract”) shall only be deemed to have been entered into between the Parties when either (i) GomSpace has accepted the Order by issuing a final order confirmation in writing or (ii) when the Parties have entered into a written and mutually signed contract. These General Conditions shall in any event be deemed to have been incorporated into such Contract even without these General Conditions being referred to or attach to such Contract.

4. A Contract does not include any expenses to cover taxes or customs tariffs, which, if applies, are to be paid by the Purchaser. If Purchaser is resident in a country where retention tax is practiced, GomSpace shall be entitled to gross up accordingly.

5. Quotations made by GomSpace may contain drawings, technical documentation and information of commercial value. The Quotation and any associated information shall be treated as confidential by the Purchaser and may not be disclosed in any way to a third party without explicit written consent from GomSpace.

### **PRODUCT INFORMATION**

6. All information and data contained in product brochures and price lists are binding only to the extent that they are by reference expressly included in a Contract.



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## **DRAWINGS AND DESCRIPTIONS**

7. All drawings and technical documentation relating to the Products or its manufacture submitted by one Party (“Submitting Party”) to the other Party (“Receiving Party”) shall remain the property of the Submitting Party. Drawings, technical documentations or other technical information disclosed by the Submitting Party to the Receiving Party shall not, without the consent of the Submitting Party, be used for any other purpose than installation, commissioning, operation or maintenance of the Products. These may not, without the written consent of the Submitting Party, otherwise be used or copied, reproduced or communicated to a third party.

## **DELIVERY, PASSING OF RISK**

8. Any agreed terms of delivery shall be in accordance with the INCOTERMS in force at the formation of the Contract, cf. Clause 3. If no terms of delivery are specifically agreed delivery shall be Ex Works, GomSpace, Aalborg Denmark. If GomSpace, at the request of the Purchaser, undertakes to send/dispatch the Products to a destination designated by the Purchaser, the risk will pass no later than when the Products is handed over to the first carrier. Partial shipment shall be permitted unless otherwise agreed in writing.

## **TIME FOR DELIVERY, DELAY**

9. If the Parties, instead of specifying the date for delivery, have specified delivery within a time span, such period shall begin as soon as the Contract is entered into, all official formalities have been completed, payments due at the formation of the Contract have been made, any agreed securities have been given and any other preconditions have been fulfilled.

10. If GomSpace anticipates that it will not be able to deliver the Products at the time for delivery, GomSpace shall forthwith notify the Purchaser thereof in writing, stating the reason, and if possible, the time when delivery can be expected.

11. If delay in delivery is caused by any of the circumstances mentioned in Clause 38 or by an act or omission on the part or of the Purchaser, including suspension under Clause 18 or 40, the time for delivery shall be extended by a period which is reasonable having regard to the circumstances in the case. This provision applies regardless of whether the reason for delay occurs before or after the agreed time for delivery.

12. If the Products is not delivered at the time for delivery the Purchaser is not entitled to liquidated damages unless otherwise agreed in writing. If the Products is not delivered at the time for delivery the Purchaser may in writing demand delivery within a final reasonable period of time, which shall not be less than two weeks. If GomSpace does not deliver within such final period and this is not due to any circumstance for which the Purchaser is responsible, then the Purchaser may by notice in writing to GomSpace terminate the Contract for the part of the Products which is delayed.

13. Termination of the Contract under Clause 12 is the only remedy available to the Purchaser in case of delay on the part of GomSpace. All other claims against GomSpace based on such delay shall be excluded.



14. If the Purchaser anticipates that the Purchaser will be unable to accept delivery at the delivery time, the Purchaser shall forthwith notify GomSpace thereof stating the reason, and, if possible, the time when the Purchaser will be able to accept delivery. If the Purchaser fails to accept delivery at the delivery time the Purchaser shall nevertheless pay any part of the purchase price which becomes due on delivery as if delivery had taken place. GomSpace shall arrange for storage of the Products at the risk and expense of the Purchaser. GomSpace shall also, if the Purchaser so requires, insure the Products on the Purchaser's expense.

15. Unless the Purchaser's failure to accept delivery of the Products is due to any circumstances as mentioned in Clause 37, GomSpace may by notice in writing require the Purchaser to accept delivery within a final reasonable period. If, for any reason for which GomSpace is not responsible, the Purchaser fails to accept delivery within such period, GomSpace may by notice in writing terminate the Contract in whole or in part. GomSpace shall then be entitled to compensation for the loss GomSpace has suffered by reason of the Purchaser's default. The compensation shall not exceed that part of the purchase price, which is attributable to that part of the Products in respect of which the Contract is terminated.

## **PAYMENT**

16. The purchase price shall be paid according to invoice.

17. Whatever means of payment used, payment shall not be deemed to have been effected before GomSpace's account has been fully and irrevocably credited.

18. If the Purchaser fails to pay by the stipulated date, GomSpace shall be entitled to interest from the day on which payment was due. The rate of interest shall be as agreed between the parties. If the parties fail to agree on the rate of interest, the rate of interest shall be CIBOR (3month) + 5% of the invoice amount due for each day such amount remains past due. In case of late payment GomSpace may, after having notified the Purchaser in writing, suspend its performance under these General Conditions and the Contract until GomSpace receives payment. If the Purchaser has not paid the amount within three months GomSpace shall be entitled to terminate these General Conditions and the Contract by notice in writing to the Purchaser and to claim compensation for the loss GomSpace has incurred.

19. The Products shall remain the property of GomSpace until paid for in full to the extent that such retention of property is valid under the applicable law. The Purchaser shall at the request of GomSpace assist in taking any measures necessary to protect GomSpace's title to the Products in the country concerned. The retention of title shall not affect the passing of risk under Clause 8.

20. Payment must be made in EURO to the bank account indicated by GomSpace on the invoice and at the latest 10 days after the billing date stated on the invoice, unless otherwise explicitly agreed in the Contract.



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## **TERMINATION/CANCELLATION FEE**

21. Should the Purchaser terminate/cancel the Contract for any reason due to the Purchaser, cf. Clause 12 before the delivery of the Products, Gomspace will charge a Termination/Cancellation fee of:

- a) 10% of the total amount of the standard products and services and;
- b) up to 100% of non-standard products and services.

## **ACCEPTANCE PROCEDURES AND LIABILITY FOR DEFECTS**

22. Pursuant to the provisions of Clauses 22-35 inclusive, GomSpace shall remedy any defect resulting from faulty design, materials or workmanship. For the purpose of these Terms & Conditions, a product is considered defective if it fails to perform the functions as indicated in the operation manuals, technical specifications or any other similar documents supplied with the equipment, and the failure is due to internal device characteristics.

23. Since generally the Products are provided to be used for a development project undertaken in a research environment by the Purchaser and the Products are to be integrated into a system that includes Purchaser furnished parts that are not qualified by GomSpace prior to integration a general guarantee cannot be provided by GomSpace covering the delivered Products.

24. GomSpace's liability for defects is limited to defects which appear within 12 months after the agreed date of delivery ("Warranty Period"). If a defect appears within the Warranty Period, the Purchaser is obliged to carry out any acceptance test procedure as is deemed necessary to verify the function and quality of the delivered Products.

25. The Purchaser shall without undue delay notify GomSpace of any defects, which appears. Such notice shall under no circumstances be given later than 5 days after the expiry of the Warranty Period. Where the defect is such that it may cause damage, the notice shall be given immediately. If the Purchaser does not notify GomSpace of a defect within the time-limits set forth in this Clause, the Purchaser shall lose its right to have the defects remedied and/or claim compensation from GomSpace.

26. On receipt of the notice in writing under Clause 24 GomSpace shall free of charge deliver all necessary spare parts that will allow the Purchaser to remedy the defect or accept to replace the faulty Products. The Purchaser shall bear all other costs related to the repair. Unless otherwise agreed in writing, necessary transport of parts for the Products in connection to the remedying of defects for which GomSpace is liable shall be at the risk and expense of GomSpace.

27. If the Purchaser has given such notice as mentioned in Clause 24 and no defect is found for which GomSpace is liable, GomSpace is entitled to compensation for the costs incurred by GomSpace.

28. The Purchaser shall, at its own expense arrange for any dismantling and reassembly of equipment other than the Products, to the extent that this is necessary to remedy the defect.



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29. Unless otherwise agreed in writing, the Purchaser shall bear any additional costs which GomSpace incurs for repair, dismantling, installation and transport as a result of the Products not being located in a place other than the place of delivery.

30. Defective parts, which have been replaced, shall be made available to GomSpace and shall be its property.

31. Where the defect has not been successfully remedied as stipulated under Clause 25;

a) The Purchaser is entitled to a reduction in the purchase price in proportion to the reduced value of the Products, provided that under no circumstances shall such reduction exceed 20% of the purchase price; or

b) Where the defect is as substantial as to significantly deprive the Purchaser of benefit of the Contract, the Purchaser may terminate the Contract by written notice to GomSpace. The Purchaser is then entitled to compensation for the loss he has suffered up to a maximum of 20% of the purchase price.

32. When a defect in a part has been remedied, GomSpace shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Products.

33. GomSpace is not liable for defects arising out of materials provided by, or a design stipulated by the Purchaser.

34. GomSpace is only liable for defects, which appear under the conditions of operation provided for in the Contract and under proper use of the Products. GomSpace's liability does not cover defects, which are caused by faulty maintenance, incorrect installation or faulty repair by the Purchaser, or by alterations carried out without GomSpace's consent in writing. GomSpace's liability does not cover normal wear and tear or deterioration.

35. Save as stipulated herein GomSpace shall not be liable for any defects. This applies to any loss the defect may cause including but not limited to loss of production, loss of profit and other indirect loss.

## **PRODUCT LIABILITY**

36. GomSpace shall not be liable for any damage to property caused by the Products after the Products have been delivered and whilst it is in the possession of the Purchaser. Nor shall GomSpace be liable for any damages to products manufactured by the Purchaser, or to products of which the Purchaser's products form a part.

37. If GomSpace incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall defend, hold harmless and indemnify GomSpace against claims, demands, obligations, judgements and liabilities of any nature whatsoever. If claims for damage as described in this Clause is lodged by a third party against one of the Parties, the latter Party shall forthwith inform the other Party thereof in writing. GomSpace and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages against one of them on the basis of damage allegedly caused by the Products.



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## **FORCE MAJEURE**

38. Either Party shall be entitled to suspend performance of its obligations under these General Conditions and a Contract to the extent that such performance is impeded or made unreasonably onerous by any circumstance normally referred to as force majeure including acts of God, acts of Government or other prevailing authorities, acts of terrorism or sabotage or war, solar storms and flares, meteor showers and air burst explosion (“Force Majeure”). If a Force Majeure event occurred prior to the formation of the Contract it shall give right to suspension only if its effect, on the performance of these General Conditions and the Contract could not be foreseen at the time of formation of the Contract.

39. The Party claiming to be affected by Force Majeure (“Affected Party”) shall notify the other Party (“Non-affected Party”) in writing without delay on the intervention and on the cessation of such circumstances. If Force Majeure prevents the Purchaser from fulfilling its obligations, the Purchaser shall compensate GomSpace for expenses incurred in securing and protecting the Products.

40. Regardless of what might otherwise follow from these General Conditions either Party shall be entitled to terminate the Contract by notice in writing to the other Party if performance of these General Conditions and a Contract is suspended under Clause 35 for more than six months.

## **ANTICIPATED NON-PERFORMANCE**

41. Notwithstanding any other provisions in these General Conditions regarding suspension, each Party shall be entitled to suspend the performance of its obligations under these General Conditions and a Contract, where it is clear from the circumstances that the other Party will not be able to perform its obligations. A Party suspending its performance under these General Conditions and a Contract shall forthwith notify the other Party thereof in writing.

## **GENERAL LIABILITY LIMITATIONS**

42. Notwithstanding any other provisions of these General Conditions and a Contract, GomSpace’s total aggregate liability arising out of delivery of the Products shall not exceed 20% of the purchase price actually paid by the Purchaser for the Products (VAT, taxes and/or other duties excluded) which forms the basis of GomSpace’s liability.

43. GomSpace shall, however, in no event be liable for any loss of profit, loss of revenue, loss of opportunity, loss of use, or any other special, incidental or consequential loss or consequential damages or any indirect losses in connection with or arising out of these General Conditions and a Contract.

44. For any Products that will be launched into space, GomSpace shall have no responsibility/liability whatsoever for such Products and for any damages/losses – whether direct or indirect - arising from or relating to events that occur as part of or after the commencement of the launch procedure carrying such Products into space. In addition, any representation and warranty giving by GomSpace under these General Conditions and a Contract shall expire upon commencement of the launch



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procedure carrying the Products into space. If GomSpace incurs liability towards any third party for any damages/losses as described in this Clause, the Purchaser shall indemnify, defend and hold GomSpace harmless.

45. The abovementioned limitations in Clauses 41 - 43 shall not apply in the event of fraud, gross negligence or willful misconduct of GomSpace.

## **IMPORT AND EXPORT**

46. The Purchaser is responsible for investigating if an import permit is required in order to import the Products to the country of delivery and if so, the Purchaser is responsible for providing such prepared documents to GomSpace in due time. Any expense required to obtain such permit must be covered by the Purchaser.

47. Moreover, the Purchaser is responsible for investigating if any export permit is required to export the Products to the country of delivery and if so, the Purchaser is responsible for providing such prepared documents (including end-user statement) to GomSpace in due time. Any expense required to obtain such permit must be covered by the Purchaser.

48. The Purchaser is required to pay any applicable taxes and customs tariffs required to deliver the Products.

## **DISPUTES AND APPLICABLE LAW**

49. In the event of any controversy or claim arising out of/or in relation to any provision of these General Conditions and/or a Contract, the breach or invalidity thereof, the Parties shall try to settle the problem amicably between themselves. Should they fail to agree, any such controversy or claim shall be settled by arbitration administered by The Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced. The arbitral tribunal shall have its seat in Aalborg, Denmark. The language of the arbitration proceedings shall be English.

50. These General Conditions/a Contract and the validity thereof shall be governed by and construed in accordance with the laws of Denmark, however, excluding the Danish conflict law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## **PUBLICITY**

51. Any news release, announcement, advertisement or publicity concerning purchase and supply of Products from GomSpace shall be agreed by the Parties prior to its public release, it being understood that GomSpace is subject to disclosure rules as a publicly-traded company and the Parties will ensure that their staff respond promptly to review and approve any public announcement required by such disclosure rules.

