

# General Terms of delivery of SICK AB

As of 12 December 2019

**1 AREA OF APPLICATION**

1.1 All deliveries and services provided by SICK AB, company ID no. 556463-2247, Storsätragränd 5B, 127 39 Skärholmen, Sweden, (hereinafter referred to as the "Supplier") are subject to these General Terms of Delivery and to separate contractual agreements, if any. These General Terms of Delivery shall apply unless changed by written agreement between the parties. In the absence of written confirmation in conjunction with conclusion of the contract, no statements or information shall override the provisions of these terms of delivery or in any other respect influence the contents of the contract. For the avoidance of doubt, deviating or additional general terms and conditions of the Purchaser shall solely apply to the extent expressly confirmed in writing by the Supplier.

1.2 These regulations are not applicable to software included in the delivery insofar as the software is subject to separate conditions.

**2 OFFER – CONCLUSION OF CONTRACT – CONTENTS OF CONTRACT**

2.1 Unless expressly marked as binding, offers are nonbinding. Binding offers must be accepted by the Purchaser within a reasonable time. Verbal or written orders are considered accepted when a written order confirmation is issued or the ordered goods are delivered within an adequate period of time.

**3 DRAWINGS AND DESCRIPTIONS**

3.1 All information concerning weight, dimensions, capacity, price, technical or other data in catalogues, brochures, circulars, advertisements, illustrations and price lists are approximate. Such information is binding only when expressly referenced in the contract.

3.2 Unless otherwise agreed, any drawings or technical documents provided by the Supplier and relating to the manufacture of a product or part thereof are subject to the property right, intellectual property right and copyright of the Supplier; the Purchaser shall not use or copy, reproduce, release or otherwise give a third party knowledge of such documentation without the Supplier's consent.

**4 CONFIDENTIALITY**

4.1 Information relating to circumstances, including technical information (such as for example drawings and technical documents) and relations to clients and other business contacts, to which the parties become privy in the course of their collaboration, and which is not common knowledge, shall not be divulged to a third party through the release of documentation or in any other manner beyond what is necessary for the party's execution of, or interest in, the contract. Each party shall ensure compliance with this confidentiality requirement by means of confidentiality agreements signed by its personnel or other appropriate means. The confidentiality requirement shall endure beyond the completion or termination of the contract.

**5 PACKAGING**

5.1 Any pricing quoted in price lists and catalogues is deemed to apply to unpackaged goods.

**6 ACCEPTANCE TESTING**

6.1 Unless otherwise agreed, any contractual acceptance testing shall be carried out in the Supplier's facility during normal working hours. If the contract does not include test specifications, the testing shall be performed in accordance with the norms generally applied within the relevant industry in the country where the goods are being manufactured.

- 6.2 The Supplier shall inform the Purchaser of acceptance testing in sufficient time to allow the Purchaser's representative to attend. If the Purchaser is not represented at the testing, the Supplier shall provide the Purchaser with a test protocol, which shall constitute binding proof with respect to the pertinent test parameters.
- 6.3 If acceptance-testing shows that the goods fail to meet contractual requirements, the Supplier shall promptly take measures to bring the goods into compliance with the contract. Renewed testing shall then be performed at the Purchaser's request. Insignificant defects shall not justify a demand for renewed testing.
- 6.4 All costs relating to acceptance testing performed in the Supplier's facility are for the Supplier's account. The Purchaser is responsible for his own expenses, such as travel costs and per- diems for himself and any assistants attending the testing.

## **7 DELIVERY AND DELIVERY PERIOD**

- 7.1 Delivery is made ex Supplier's warehouse. Time of delivery shall be reckoned from the latest of the following dates: date the contract was concluded;  
Date the Supplier was informed of any necessary licenses or other permits;  
Date the Supplier received payments contractually required to be made before commencement of production; date the Supplier received all technical data and instructions necessary for the delivery.
- 7.2 Should the Supplier find it impossible to maintain a contractual delivery date, or should the Supplier expect a delay, the Supplier shall promptly inform the Purchaser in writing, stating the reason for the delay and, if possible, the estimated date of delivery.
- 7.3 If the contractual delivery period is also approximate, either party is entitled, when two-thirds of such delivery period has elapsed, to request the other party in writing to agree on a definite date.
- 7.4 If no delivery period is stated in the contract, either party may submit a request in accordance with the preceding clause six months after signing the contract. The date thus determined shall constitute the contractual delivery date.
- 7.5 If delivery is prevented or impeded due to a circumstance specified in Clause 18.1, or by the Purchaser's action or negligence, the delivery period shall be extended accordingly. This provision shall apply regardless whether the circumstance in question occurs before or after expiry of the agreed delivery period.
- 7.6 If the Supplier, because of negligence, fails to deliver a product by the agreed delivery date, or within the extended period determined under the provisions of Clause 7.5, the Purchaser shall be entitled to penalties to typical contractual losses that could have been foreseen, and provided the Purchaser submitted a claim for penalties immediately when the delay occurred. This also applies to loss of profits and any other financial loss.
- 7.7 The following percentages and maximum amounts shall apply to the referenced penalties: 0.5% per week of the portion of the agreed price applicable to the part of the goods that could not be used as intended due to the delay. If the base amount for calculation of the penalty exceeds SEK 500,000, a penalty of 0.25% per week shall be assessed on the exceeding amount. The penalty, which is calculated for every complete week of delay reckoned from the agreed delivery date, shall not exceed 7.5% of the portion of the purchase price applicable to the part of the goods that could not be used as intended.
- 7.8 The Purchaser's right to penalties shall preclude any other claim arising from the Supplier's late delivery of the goods.
- 7.9 If the Purchaser finds that he cannot accept delivery of the goods on the agreed date, he should promptly inform the Supplier in writing, stating the reason for the delay and, if

possible, when he expects being able to accept delivery. Purchaser who fails to accept delivery on the agreed date shall nevertheless be liable for payment as if the goods had been duly delivered.

- 7.10 If the Purchaser's failure in terms of Clause 7.9 is not due to a circumstance referenced in Clause 18.1, the Supplier may call upon the Purchaser in writing to take delivery of the goods within a reasonable period.
- 7.11 If the Purchaser, regardless of the reason, fails to comply, the Supplier is entitled to cancel the contract by written notice to the Purchaser with respect to the portion of the goods that remains undelivered due to the Purchaser's failure.
- 7.12 Purchaser who fails to take delivery of the goods at the agreed time shall be liable for the risk of damage to the goods and is obliged to compensate the Supplier for any costs associated with care, storage and insurance of the goods.
- 7.13 Should the Supplier cancel the contract pursuant to Clause 7.11, he shall be entitled to compensation by the Purchaser in an amount commensurate with the purchase price of the goods, less any amount that the Supplier may save by not making the delivery to the Purchaser.

## **8 INSTALLATION OR ASSEMBLY**

- 8.1 To the extent that installation, assembly or commissioning has been agreed upon, the Purchaser shall, at their own expense, provide in due time: any supplementary works foreign to the branch of trade such as earthworks, construction works, etc. including the required skilled workers and auxiliary staff, building material and tools;
- a) the articles and materials required for assembly, installation and commissioning, such as scaffolding, wedges, lubricants, fuels, etc.;
  - b) operating power and water at the place of operation, including the necessary connections, heating and light;
  - c) suitably-sized, dry and lockable rooms for stocking machine parts, equipment, materials, tools, etc. as well as appropriate work and recreation rooms with appropriate sanitary equipment for the Supplier's employees at the installation site; further, the Purchaser shall take the same steps he would take in order to protect his employees and belongings in order to protect the Supplier's employees and belongings at the construction site;
  - d) Protective clothing and protective devices necessary due to special circumstances at the installation site.
- 8.2 Before the start of the work, the Purchaser must provide without request the necessary specifications concerning the location of hidden power, gas, or water pipes, or similar constructions, as well as the required static specifications.
- 8.3 Before beginning with the installation or assembly, free issue equipment as well as all other items necessary for the performance of the works must be at the site, and any preparatory works must be in such a state that the installation or assembly staff will be able to start their work as agreed after arrival and finish it without interruption. Access to as well as the site itself must be paved, cleared and freely accessible.
- 8.4 Should the installation, assembly, or commissioning be delayed due to circumstances not attributable to the Supplier, the Purchaser shall be obliged to bear to a reasonable extent the costs arising from waiting periods or for the necessary travels of installation or assembly staff.
- 8.5 Upon the Supplier's request, the Purchaser shall confirm in writing the working hours of the assembly staff as well as the completion of the installation, assembly or commissioning.
- 8.6 The Supplier is entitled to request acceptance of the works after completion. Acceptance shall take effect when the Purchaser has declared acceptance in writing. The same shall apply if the Supplier has granted the Purchaser a reasonable period of time for acceptance

after completion of the service and the Purchaser does not refuse acceptance within this period of time, stating at least one significant defect. If the Purchaser fails to do so, the acceptance is deemed granted. Acceptance is also deemed granted if the work has been put into use, if applicable, after an agreed testing period.

## **9 PASSING OF RISK**

9.1 The risk shall pass to the Purchaser with the selection/provision of the delivery item. To the extent the Supplier has also assumed installation, assembly or commissioning, the risk shall pass to the Purchaser with the delivery of the delivery item at the installation or assembly site.

9.2 Should the dispatch of the delivery item or installation, assembly or commissioning be delayed or omitted due to reasons attributable to the Purchaser, the risk shall pass to the Purchaser at the time when it would have passed to the Purchaser had no delay occurred.

9.3 The Supplier shall, on request and at the expense of the Purchaser, insure the delivery item against theft, breakage, and damage caused by transportation, fire or water or against any other insurable risks.

## **10 PRICING AND PAYMENT**

10.1 Unless otherwise agreed, the Supplier shall be entitled to compensation for cost increases resulting from taxes, official levies and exchange rate fluctuations after the date of his offer.

10.2 If the contractual delivery date is extended by more than six months by agreement or in accordance with Clause 7.5, the Supplier shall not be bound by the contracted price, but shall in such case be entitled to a price that is reasonable on the basis of his generally applicable pricing as of the date of delivery.

10.3 Invoices shall be paid net within 30 days from the invoice date by direct transfer to the Supplier's bank account. If the Purchaser fails to make payment by due date, the Supplier shall be entitled to statutory late payment interest.

10.4 If the Purchaser, for reasons other than those referenced in Clause 18.1, has not paid the overdue amount within three months, the Supplier may cancel the contract by notifying the Purchaser in writing and shall be entitled to compensation by the Purchaser under the provisions of Clause, 7.13.

## **11 RETENTION OF TITLE**

11.1 If it appears unlikely that the Purchaser will fulfil his legal obligations under the contract, or if the Supplier cancels the contract, the Supplier shall have the right to repossess any goods that can still be legally recovered. Until full payment has been made, the buyer shall not without the Supplier's written consent dispose of the goods in a manner that could jeopardize the Supplier's right to repossession. No acceptance or promissory note shall be considered as payment until fully redeemed.

## **12 LIABILITY FOR DEFECTS**

12.1 The Supplier undertakes to remedy any defects arising from faulty construction, materials or manufacture in accordance with Clauses 12.2-12.16.

12.2 The Purchaser is required to examine the goods as soon as possible upon receipt. If there is reason to believe that a product defect may result in damage, a written complaint must be made immediately.

12.3 The Supplier's liability shall be limited to defects reported by the Purchaser within 15 days from the date the defect was or should have been detected, and within one year

from the contractual delivery date or a subsequent date on which the Supplier fulfilled his obligations in accordance with an agreed delivery clause.

- 12.4 Any replaced or re-manufactured components are covered by warranty on the same terms and conditions as those applicable to the original product for a period of three months. This provision is not applicable to the remainder of the goods for which the warranty will only be extended by the period during which the goods were unusable as a result of a defect in the meaning of Clause 12.1.
- 12.5 On receipt of the Purchaser's written notice concerning a defect in the meaning of Clause 12.1, the Supplier shall remedy the defect without delay and, except as provided in Clause 12.8, at his own expense. The Purchaser shall return any defective component in the meaning of Clause 12.1 to the Supplier for repair or replacement, unless the Supplier chooses to execute the repairs at the Purchaser's location.
- 12.6 By delivering a duly repaired or replaced component to the Purchaser, the Supplier shall be deemed to have fulfilled his obligations under this clause with respect to the defective component.
- 12.7 Instead of addressing a defect, the Supplier may refund the purchase price, in which case the Purchaser must return the goods essentially unchanged and undiminished or, if this proves impossible, credit the Supplier with an amount equal to the value of the retained goods when settling the account. The amount which the Supplier is required to repay to the Purchaser shall be reduced by the amount the Purchaser reasonably should pay for deriving profit and benefit from the goods, as well as an amount commensurate with the depreciation of the goods.
- 12.8 The Purchaser shall bear the cost and risk of transporting defective components to the Supplier, whereas the Supplier shall bear the cost and risk of transporting any replaced or repaired goods to the destination specified in the contract or, if no such destination is stated, to the place of delivery.
- 12.9 If the Supplier carries out repairs as referenced in Clause 12.5 at the Purchaser's location, the latter shall pay travel costs and per-diems relating to travel and working hours expended by the Supplier's personnel.
- 12.10 Any defective components replaced pursuant to Clause 12.1 shall be placed at the Supplier's disposal.
- 12.11 If the Supplier, despite being requested to do so, fails to meet his obligations within a reasonable period pursuant to Clause 12.5, the Purchaser may, at his option, have necessary repairs carried out or new goods manufactured at the Supplier's expense provided that he exercises due diligence in doing so, or, if the defect is of fundamental importance to the Purchaser and this was or should have been apparent to the Supplier, may cancel the contract with respect to the portion of the goods which could not be used as intended due to the Supplier's negligence. In such case, settlement shall be made pursuant to Clause 12.7. The Supplier's obligation to carry out the measures referenced in Clause 12.5 and compensate the Purchaser pursuant to the present paragraph shall be limited to a total amount not exceeding 15 per cent of the price of the goods.
- 12.12 If the Purchaser or any third party remedies a defect improperly, the Supplier shall not be liable for the resulting consequences. The same applies to any changes made to the delivery item without prior approval by the Supplier.
- 12.13 The Supplier's responsibility shall not extend to defects caused by materials supplied or designs stipulated by the Purchaser.
- 12.14 Notwithstanding the provisions of Clauses 12.1-12.13, the Supplier's obligations shall not extend beyond fifteen months from commencement of the original warranty period.

12.15 The Supplier's liability is limited to defects arising during proper use and under operating conditions foreseen in the contract. It does not extend to defects caused by inadequate maintenance or improper assembly by the Purchaser, incorrect or negligent treatment, modifications without the Supplier's written consent, repairs incorrectly performed by the Purchaser, or normal wear and tear. The Supplier shall have no liability for defects save as stipulated in Clauses 12.1 – 12.14. This applies to any loss the defect may cause, such as loss of production, loss of profit and other consequential economic loss.

### **13 PRODUCT LIABILITY**

13.1 The Purchaser shall indemnify and hold the Supplier harmless to the extent that the Supplier incurs liability towards any third party in respect of loss or damage for which the Supplier is not liable towards the Purchaser according to Clauses 13.2-13.3.

13.2 The Supplier shall have no liability for damage caused by the goods:

a) To any (movable or immovable) property, or consequential loss due to such damage, occurring while the goods are in the Purchaser's possession, or

b) To products manufactured by the Purchaser or to products of which the Purchaser's products form a part.

13.3 The above limitations of the Supplier's liability shall not apply if he has been guilty of gross negligence.

13.4 If a third party lodges a claim for compensation against Supplier or Purchaser for loss or damage referred to in Clause 13, the other party to the contract shall forthwith be notified thereof in writing.

13.5 The Supplier and the Purchaser shall be mutually obliged to themselves be summoned to the court or arbitral tribunal, which examines claims against either of them based on damage or loss alleged to have been caused by the goods. The liability as between the Supplier and the Purchaser shall, however, always be settled in accordance with Clause 20.

### **14 LIMITATION OF LIABILITY**

14.1 In the event of circumstances, which render a party liable under the present terms, any damages shall be limited to such loss as could reasonably have been foreseen at the time the contract was concluded as a typical result of said circumstances and shall be subject to the additional limitations referenced in Clauses 14.2 and 14.3.

14.2 A party alleging breach of contract is obliged to take reasonable measures to limit the resulting damage. Should he fail to do so, any damages to which he would otherwise have been entitled shall be reduced or forfeited.

14.3 The total amount which the Supplier may have to pay to the Purchaser as a result of the purchase shall be limited to the lesser of 15 per cent of the price of the goods and 10 times the base amount ([prisbasbelopp](#)) stipulated in the General Insurance Act (SFS 1962:381).

### **15 THIRD PARTY LIABILITY**

15.1 The provisions limiting liability stipulated under Clauses 12-14 shall also apply in favor of subsidiaries, subcontractors, licensors or other vicarious agents of the Supplier.

### **16 STATUTE OF LIMITATION**

16.1 Any claim against the Supplier shall be forfeit unless court or arbitration proceedings pursuant to Clause 20 are initiated within two years from the delivery of the goods.

### **17 EXPORT**

17.1 The Purchaser undertakes to comply with the export control regulations and foreign trade law of the Federal Republic of Germany, of the European Union, of the United States of America and with all other applicable national and international export control regulations

and foreign trade laws.

- 17.2 All business transactions are made with the reservation are made with the reservation that each business transaction, in terms of its content and the natural persons and entities directly or indirectly involved in it, must be permitted according to all of the aforementioned regulations.
- 17.3 If a business transaction requires a license, the Supplier is entitled to delay the performance until an export license has been obtained or to withdraw from the respective individual contract. In such cases, the Supplier shall not be held liable for delayed performance or non-performance.
- 17.4 Insofar as it is required or useful for export control purposes by authorities or the Supplier, the Purchaser shall provide without delay all the information requested by the Supplier, including, but not limited to, information about the end user, final destination, and intended end-use.
- 17.5 The Purchaser also undertakes not to use, offer to sale, or sell for use in weapons and/or weapon systems any items from the Supplier (goods, software and technology) or items made available by the Supplier.
- 17.6 If the Purchaser violates any of the obligations in this clause and/or if a transaction is prohibited in whole or in part, the Supplier is entitled to terminate this contract for good cause without observing the statutory period of notice and to withdraw in whole or in part from all individual contracts included hereunder. All claims against the Purchaser remain unaffected.

## **18 FORCE MAJEURE**

- 18.1 If delivery periods or dates cannot be met due to force majeure or other disruptions beyond the control of the Supplier, for example, serious health hazards such as epidemics or nuclear radiation, war, terrorist attacks, riots, and other similar occurring threats as well as labour disputes, including at the subcontractors of the Supplier, or governmental acts, such as import and export restrictions, or disruptions of operations, either the deadline for the performance by the Supplier will be extended by the duration of the force majeure event or the Supplier shall have the right to withdraw from the contract in whole or in part without liability for any delay in performance or non-performance of their obligations.
- 18.2 Upon request of the Supplier, the Purchaser shall declare within reasonable time, after a period of grace of six months, whether they insist on delivery or wish to rescind the contract due to the Supplier's delay.

## **19 ADJUSTMENT, WITHDRAWAL**

- 19.1 If and when unforeseeable events pursuant to Clause 18.1 modify the economic objective or the content of the delivery substantially or have a substantial impact on the operations of the Supplier, the contract shall be adjusted accordingly in good faith, subject to the provision stipulated under Clause 18.1. In the event that such adjustment is not economically reasonable, the Supplier shall be entitled to withdraw from the contract.
- 19.2 The Supplier shall be entitled to withhold deliveries or services or to withdraw from the contract if the Supplier obtains knowledge of any circumstances whereby the Purchaser might become insolvent or, be unable or unwilling to duly fulfill their payment obligations when they become payable due to other reasons.

## **20 JURISDICTION AND ARBITRATION**

- 20.1 In the event of default, the Supplier's claim for payment of the purchase price shall be enforceable by application for a summary judgement (*betalningsföreläggande*). Disputes concerning less than 10 times the base amount (*prisbasbelopp*) stipulated in the General Insurance Act (SFS 1962:381) shall be settled by Stockholms tingsrätt as the court of first instance.
- 20.2 Other disputes, controversies or claims arising out of or in connection with these General



Terms of Delivery, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. The arbitral tribunal shall be composed of a sole arbitrator. The seat of arbitration shall be Stockholm. The language to be used in the arbitral proceedings shall be Swedish.

- 20.3 All legal relations in connection with these General Terms of Delivery shall be governed by Swedish law. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- 20.4 The parties undertake and agree that all arbitral proceedings conducted with reference to this arbitration clause will be kept strictly confidential. This confidentiality undertaking shall cover all information disclosed in the course of such arbitral proceedings, as well as any decision or award that is made or declared during the proceedings.
- 20.5 Nothing in these General Terms of Delivery shall prevent either party from enforcing its rights under any arbitral decision or award made or declared, nor from protecting or enforcing its intellectual property rights or confidentiality rights on any urgent or interim basis before any court or authority of competent jurisdiction.

## **21 SEVERABILITY**

- 21.1 Should any of the provisions of this contract be or become invalid, void or unenforceable, the validity of the remaining provisions shall remain unaffected thereby. In such case the invalid, void or unenforceable provision shall be interpreted or substituted in such a way as to achieve the intended economic objective of the invalid or void provision. This shall not apply if adherence to the contract constitutes an unreasonable hardship for either contract party.

## **22 ADJUSTMENT, WITHDRAWAL**

- 22.1 If and when unforeseeable events pursuant to Clause 18.1 modify the economic objective or the content of the delivery substantially or have a substantial impact on the operations of the Supplier, the contract shall be adjusted accordingly in good faith, subject to the provision stipulated under Clause 18.1. In the event that such adjustment is not economically reasonable, the Supplier shall be entitled to withdraw from the contract.
- 22.2 The Supplier shall be entitled to withhold deliveries or services or to withdraw from the contract if the Supplier obtains knowledge of any circumstances whereby the Purchaser might become insolvent or, be unable or unwilling to duly fulfill their payment obligations when they become payable due to other reasons.