

## GENERAL TERMS & CONDITIONS SALES & PURCHASE

### 1. Contract.

No binding contract shall exist or be deemed to exist until Fumo Communications dispatch a written order/order confirmation of the business-partner. Thereafter, no changes to the contract shall be accepted without the written consent of an authorised representative of Fumo Communications and the business-partner.

### 2. Terms of Contract.

Unless otherwise confirmed by Fumo Communications in writing, these General Terms & Conditions shall apply to the contract to the exclusion of all other inconsistent terms, conditions and warranties (whether express, statutory or implied) in the business-partner's documentation. No alteration, variation, deletion, modification, amendment, or addition may be made to these General Terms & Conditions (notwithstanding anything to the contrary in the business-partner's documentation), unless confirmed in writing by an authorised representative of Fumo Communications. Any additional typed and/or written terms and conditions contained in any documentation exchanged between Fumo Communications and their business-partner shall be for administrative purposes only; i.e. to identify the types and quantities of goods to be supplied, line item prices, delivery schedule, and other similar ordering data.

### 3. Delivery/Liability/Payment.

General base of deliveries is EX WORKS, Incoterms (2000 version), unless otherwise agreed in writing; i.e. quotation, order confirmation, invoice aso.. Delivery dates shall be as agreed between Fumo Communications and their business-partner, and shall be set forth by Fumo Communications/the business-partner in their related documentation ("Agreed Delivery Date" or "Delivery Date"). Delivery dates shall be extended appropriately if Fumo Communications/the business-partner is delayed by reason of an event of Force Majeure (see Clause 9 below). Except for Fumo Communications/the business-partner's liability arising from deliberate intention, negligence or gross negligence, Fumo Communications/the business-partner shall not, in any event, be liable for any damages (direct, consequential, foreseeable or any other) for late delivery, nor under any other liability in respect thereof. Unless otherwise agreed in writing; i.e. quotation, order confirmation, invoice aso., payment shall be due and payable within 30 days after the date of Fumo Communications/the business-partner's invoice. Fumo Communications/the business-partner shall be entitled to invoice the business-partner/Fumo Communications on the agreed delivery date, regardless of whether the business-partner/Fumo Communications is required to arrange storage, shipment aso., unless otherwise agreed in writing; i.e. separate correspondence, quotation, order confirmation, invoice aso.. In the event of late payment, Fumo Communications will be entitled to receive an interest charge on the outstanding invoice from its due date at the rate of EURIBOR +2% from the business-partner.

### 4. Manufacturing.

#### 4.A. - Sales

Fumo Communications reserve the right to manufacture the goods in any of their affiliated factories; unless otherwise agreed in writing; i.e. separate correspondence, quotation, order confirmation, invoice aso..

#### 4.B. - Purchase

Unless specifically agreed in writing; i.e. separate correspondence, purchase order aso., Fumo Communications accept the business-partner's right to manufacture the goods in any of his affiliated factories.

### 5. Quantities.

Fumo Communications reserve/accept the right to a +/- 3% tolerance on any agreed shipping quantities, and will/will be invoice(d) the/by the business-partner for actual quantities delivered.

### 6. Warranty.

#### 6.A. - Sales

Fumo Communications' "Warranty Terms & Conditions" (see separate document) are generally, exclusively and without exception valid.

#### 6.B. - Purchase

The business-partner's "Warranty Terms & Conditions" are accepted.

### 7. Patent Indemnity.

The business-partner shall indemnify Fumo Communications against all damages, penalties, costs and expenses to which Fumo Communications may become liable, as a result of work done in accordance with specifications or designs provided to Fumo Communications by the business-partner, which involve or are alleged to involve the infringement of any copyright, letters patents, patent rights, trade secrets, registered design or similar rights of a third party.

### 8. Intellectual Property.

All rights in the design of the goods, as well as all intellectual property rights existing or coming into existence in relation to the goods are entirely owned by Fumo Communications.

### 9. Export.

Any contract, order or fulfillment of the same is subject to the provisos that

- all required and necessary export licenses have been granted;
- there are no other/further impediments arising from any applicable export regulations;
- any goods sold/purchased goods will not be exported or re-exported by the business-partner/Fumo Communications, unless such exports or re-exports entirely comply with all latest and applicable export regulations.

### 10. Contract Suspension.

If the business-partner violate(s) these Terms & Conditions, and that breach of contract is not been settled for good within thirty (30) days after written notice by Fumo Communications, Fumo Communications reserve the right to immediately and without further notice to suspend their performance under the contract, until the business-partner takes appropriate, serious measures to re-establish the businesspartnership to normal conditions. These reservations are to be considered in addition to any other rights, claims or damages Fumo Communications may have at law.

### 11. Force Majeure.

If the performance of the contract or of any obligation thereof, other than the payment of any money, is prevented, restricted or interfered with by reason of any act of God, civil disorder, industrial dispute, governmental act (including by statute, rule, regulation, order or requisition), war, or any other cause not under control of either contract-party, the party being affected by those reasons shall be entitled to terminate the contract, upon giving well-advanced written notice to the other party. Further more, no party of the contract shall be held liable for any mis-performance of the contract, caused by reasons of Force Majeure.

### 12. Reservation of Title.

Risk of loss associated with the goods shall pass to the business-partner on delivery, but neither legal nor equitable title to any goods shall pass to the business-partner until Fumo Communications have received full payment for those goods from the business-partner. For any goods re-sold by the business-partner before Fumo Communications have received full payment for those goods, the business-partner hereby assigns to Fumo Communications (and Fumo Communications hereby accept this assignment) all claims which the business-partner may have from that resale, up to the amount due and owing to Fumo Communications. Should the business-partner fail to make payment for any goods at due-date, Fumo Communications are entitled to re-take possession of the goods at the business-partner's expense.

### 13. Governing Law.

The contract shall in all respects be construed and operated as a Swiss contract in conformity with Swiss law.

### 14. Arbitration.

Any dispute between the parties arising from the execution of or in connection with this contract (including any termination thereof) shall first be discussed through friendly negotiations for a period of at least thirty (30) days. If the parties are unable to resolve the dispute amicably, either party may submit the dispute for arbitration to the International Chamber of Commerce, whose proceedings shall be conducted in English in accordance with the Rules of Conciliation and Arbitration. The venue of any such proceedings shall be Aarau (AG), Switzerland. Notwithstanding the preceding sentences of this paragraph, in the event of a dispute resulting from the business-partner's refusal to pay Fumo Communications' invoice for goods delivered to which the business-partner made no reasonable objection within thirty (30) days of receipt, Fumo Communications may submit that dispute to a competent court in Switzerland (or the country in which Fumo Communications' local office is located).

### 15. Miscellaneous.

This contract is not assignable by either party, without the prior written consent of the other. Either party may cancel the whole or any part of the contract in the event of insolvency, bankruptcy, re-organisation, or liquidation proceedings involving the other party. In the event, that either party perform any term herein, and the other party does not enforce that term, the counter-party has not waived its rights to do so, in the future. The business-partner agrees to pay or reimburse Fumo Communications for any VAT, or similar taxes (incl. interest charges and penalties, however excluding tax on Fumo Communications' net income) arising from the sale of goods hereunder. If any provision of this contract is held invalid or unenforceable, the remaining provisions shall not be affected thereby, and the parties shall in good faith attempt to amend this contract to eliminate such invalidity or unenforceability. The Terms and Conditions set forth herein constitutes the entire agreement between Fumo Communications and their business partner with respect to purchase as well as sales of goods. The United Nations Convention on Contracts for the International Sale of Goods (or "Vienna Convention") dated April 11, 1980 shall not apply to this contract.