

# General Terms and Conditions of Purchase



Selectron Systems AG, CH-3250 Lyss  
(here in after: Selectron)

## 1. Scope and Validity

1.1. These General Terms and Conditions of Purchase shall apply to contractual negotiations, the conclusion, contents and execution of contracts between Selectron and the suppliers and manufacturers of goods and products and the providers of services, including the performance of development contracts, (hereinafter generally referred to as «Suppliers») and form an integral part of the contract. In the event of conflict between these Terms and Conditions of Purchase and the Contract, the latter shall take precedence. This constitutes an objection to any Terms and Conditions of the Suppliers which shall not form part of the contract.

1.2. The Supplier shall accept these Terms and Conditions of Purchase by submitting an offer, by confirming an order or by accepting or executing an order, provided that Selectron has notified the Supplier of these Terms and Conditions of Purchase in connection with a request for proposal, an order or otherwise.

1.3. Amendments or supplements to these Terms and Conditions of Purchase shall only be valid if they are agreed in the contract or confirmed in writing by Selectron.

## 2. Offers

2.1. Offers shall be non-binding for Selectron, even if they are provided on request. Offers, including any demonstrations, shall be free of charge.

2.2. If the offer differs from the request for proposal, the Supplier shall indicate this expressly.

2.3. Unless specified otherwise in the request for proposal or in the offer, the Supplier shall be bound for a period of three months from the date of the offer.

## 3. Ordering / Order Confirmation

3.1. Orders shall only be valid if they are issued in writing by Selectron. Verbal orders, agreements or amendments must be confirmed in writing by Selectron in order to be valid.

3.2. Orders must be confirmed promptly in writing by the Supplier. Selectron shall reserve the right to withdraw the order if it is not confirmed within 5 working days of the order being placed. If the order confirmation differs from the order, the Supplier shall be under an obligation to point this out to Selectron. Deviations shall only be binding on Selectron if it confirms these in writing. Without such confirmation from Selectron, only the contents of the order from Selectron shall be decisive once the Supplier begins execution of the order.

## 4. Changes

4.1. Selectron may at any time request changes with regard to the contents or the scope of the deliverables (goods, products, services) or with regard to the nature of their execution (for example, regarding deadlines). In this case, the Supplier shall notify Selectron in writing of the consequences of the requested change(s), in particular, with regard to costs, deadlines, quality and safety. For its part, the Supplier may propose such changes in writing while at the same time describing the associated consequences. The execution of the change shall in any case require the written consent of Selectron.

## 5. Duty to inform

5.1. As a specialist, the Supplier acknowledges a duty to inform Selectron immediately in writing with regard to facts recognized by it or recognizable in the course of the execution of the contract which bring contractual fulfillment into question or result in impractical solutions. This also applies, in particular, with regard to any contradictions, ambiguities and/or lacunae in specifications prepared by Selectron for the deliverables (goods, products, services). The consequences of omitted information shall be borne exclusively by the Supplier.

## 6. Terms of Delivery / Packaging / Transport / Place of Performance

6.1. Only deliveries with a delivery note indicating the complete order reference (order number from Selectron), item description and quantities and insofar as applicable, additional information such as number packaging units, serial numbers, customs tariff numbers and origin marking, are accepted. If documents or necessary information are missing, Selectron can temporarily store deliveries at the Supplier's risk and expense until the arrival of the missing documents/information.

6.2. The Supplier shall be responsible for professional packaging in accordance with the applicable international transport guidelines. It shall be liable for damage to the deliverables which can be attributed to improper packaging or improper transport. Selectron reserves the right to issue special instructions with regard to packaging and/or transport but these do not absolve the Supplier from responsibility for professional packaging. If the removal of the packaging requires particular care, the Supplier shall draw the attention of Selectron to this appropriately.

6.3. Unless agreed otherwise, transport to the place of destination shall be carried out DAP (Incoterms 2010).

6.4. The place of performance shall be the place specified by Selectron, in the absence of any special stipulation it is Selectron Lyss.

## 7. Documentation

7.1. The scope of performance in each case shall also include documentation with the information necessary for subsequent use, handling and/or operation and maintenance of the delivered goods, products and/or service results and any additional documents necessary for the intended use of the deliverables, including the corresponding certificates, attestations, etc. Unless expressly agreed otherwise, no additional remuneration shall be due for this documentation and additional documents.

## 8. Involvement of Third Parties

8.1. If the Supplier intends to involve third parties for the performance of the contract, it must obtain the written consent of Selectron well in advance. The third parties concerned must be named by the Supplier. Selectron shall not withhold its consent to the involvement of third parties without good reason. The Supplier shall ensure that the same conditions apply to the third parties and their deliverables (goods, products, services) as to the Supplier, for example, with regard to intellectual property rights, confidentiality, etc. The Supplier shall also remain fully responsible to Selectron for the performance of the contract if third parties are involved and shall be liable for the deliverables (goods, products, services) and conduct of the Third Parties involved by it as for its own services and its own conduct.

## 9. Participation of Selectron

9.1. Selectron shall provide technical assistance to the Supplier by making available items such as tools, test devices, software tools, materials, etc., to the extent provided in the contract and such items shall remain the property of Selectron and must be kept separately by the Supplier, identified as the property of Selectron and insured against loss or damage at the Supplier's expense. The items made available by Selectron to the Supplier may only be used for the purpose intended within the context of the contract and, provided that they are not exhausted by the intended use, shall be returned to Selectron unsolicited at the Supplier's expense upon termination of the contract, unless Selectron agrees to another use in writing.

9.2. Selectron shall make plans, drawings, documentation, data and information, etc. available to the Supplier, insofar as the latter is reliant thereon for the performance of the contract. The Supplier shall not acquire any rights thereto and may only use them for the performance of the contract. In particular, the Supplier shall not be entitled to use these plans, drawings, documentation, data and information, etc. for the purposes of third parties. In addition, para. 16.7 shall apply.

9.3. Any additional duties of cooperation of Selectron shall be agreed individually in the contract.

## 10. Spare Parts

10.1. The Supplier shall be under an obligation to supply spare parts for the period of anticipated technical use under normal market terms and conditions. If the Supplier suspends the production of spare parts, it shall be obliged to notify Selectron and to give it the opportunity to place a final order.

## 11. Deadlines / Default

11.1. The contract has to be performed by keeping the agreed deadline(s). Selectron shall be entitled to monitor the progress of the work at the Supplier's premises. If it becomes apparent that deadlines will not be met, the Supplier shall immediately notify Selectron in writing of the reason and the anticipated duration. Under these circumstances, the Supplier must at the same time propose corresponding alternatives in writing which enable timely performance of the contract.

11.2. In the event of failure to meet an agreed deadline, the Supplier shall, without the necessity of a reminder from Selectron, be in default. If the Supplier is in default, Selectron shall be entitled to set the Supplier a reasonable deadline for subsequent fulfillment and, in case of fault on the part of the Supplier, to assert a claim for damages on account of delay. If fulfillment has still not taken place in full after expiry of the period of grace, Selectron may at its discretion,

11.2.1. insist on subsequent fulfillment by the Supplier and, in case of fault on the part of the Supplier or a third party involved by it, assert a claim for compensation of the damage resulting from the default, or

11.2.2. in the case of works contract services, arrange a substitute performance at the Supplier's expense, whether by itself or with the involvement of a third party, whereas the Supplier shall surrender to Selectron those documents and materials (including the source code) which were specifically produced according to the contract for Selectron or for which surrender was specially agreed (for example, within the context of an escrow regulation), or

11.2.3. waive the subsequent fulfillment of the contract and, in case of fault on the part of the Supplier or a third party involved by it, assert a claim for compensation of the damage arising from non-fulfillment, or

11.2.4. waive the subsequent fulfillment of the contract and cancel the contract in whole or in part with retrospective effect to the time at which the contract was concluded, whilst unravelling the mutual contractual performance to the extent as affected by the cancellation and, in case of fault on the part of the Supplier or a third party involved by it, assert a claim for compensation of the damage arising from the cancellation of the contract.

11.3. If the Supplier is in default, it shall owe a contractual penalty unless it can prove that neither it nor third parties involved by it are at fault. The contractual penalty shall be 1 per mil the total remuneration of the contract for each day in arrears, but in total not exceeding 10% of the total remuneration of the contract. The contractual penalty shall also be due if the deliverables (goods, products, services) are accepted without reservation. The payment of the contractual penalty shall not exempt the Supplier from other contractual obligations. The right to assert claims for damages shall be reserved by Selectron in accordance with para. 19, the contractual penalty shall be deducted from any compensation awarded.

## 12. Delivery and Inspection of Goods and Products

12.1. The delivery of goods and products shall take place upon signing of the orderly delivery note (para. 6.1) by Selectron at the place of destination or place of performance. Goods and products shall be inspected by Selectron within 30 days of delivery for obvious defects such as, for example, transport damage.

## 13. Testing and Acceptance of Software and Works Contract Services

13.1. The Supplier shall be under an obligation to release for acceptance only software and/or work results from services which are thoroughly tested and ready for acceptance. The Supplier's test protocols can be requested by Selectron.

13.2. The acceptance conditions, such as date of acceptance, schedule for the acceptance tests, acceptance procedure, acceptance criteria, qualification of the defects and the duties of cooperation of the Supplier during acceptance testing, are specified in more detail in the contract. Partial acceptances are also possible by mutual agreement. These are subject to overall acceptance.

13.3. After confirmation of readiness for acceptance by the Supplier, the acceptance tests shall begin. A protocol is created of the testing and its results which is to be signed both contractual partners. If no defects become apparent in the inspection, acceptance takes place by means of signing the protocol.

13.4. If insignificant defects become apparent in testing, acceptance shall nevertheless take place upon signing of the protocol. Defects shall be deemed insignificant if the contractual use of the software and/or work results from services submitted for acceptance does not undergo any significant impairment. The Supplier shall remedy the established defects free of charge within a period of time reasonable in the circumstances and to be agreed jointly. The right for deviating agreements in the contract shall be reserved.

13.5. If there are significant defects, acceptance shall be deferred. A defect shall be deemed significant if as a result of it the contractual use of the software and/or work results from services submitted for acceptance undergoes a significant impairment. The Supplier shall remedy the established significant defects within a reasonable period of time set by Selectron and shall communicate its readiness for renewed acceptance testing. If readiness is not notified in a timely fashion or significant defects are also apparent upon renewed acceptance testing, action shall be taken in accordance with para. 11.2.

13.6. If, although the requirements are met (see para. 13.1 and 13.3), Selectron refuses to take part in the acceptance testing in spite of a reminder from the Supplier and an appropriate period of grace, the service shall be deemed to have been accepted.

13.7. By means of corresponding agreement, the Parties can also provide for the acceptance and performance of acceptance testing for goods or products in accordance with this paragraph 13, even if these are not the result of works contract services.

## 14. Warranty

14.1. The Supplier shall be under an obligation to perform the contract professionally, while ensuring the appropriate care and in accordance with the current state of the art. The Supplier shall guarantee that the goods, products and/or the service results to be delivered correspond to the respective applicable norms, standards and applicable statutory provisions (for example, with regard to transport and operating safety), and in the absence of any other written agreement to the contrary, the Supplier shall obtain any necessary official authorizations or certifications at its own expense.

14.2. The Supplier guarantees that the goods, products and/or works contract services supplied by it meet the agreed specifications and furthermore, those characteristics which Selectron might also expect without a special agreement in accordance with the respective state of the art upon conclusion of the contract (unless otherwise provided by the contract) and in good faith.

14.3. If there is a defect, Selectron may request rectification of the defect free of charge or make a deduction from the contractual remuneration corresponding to the reduced value. The Supplier shall remedy the defect within an appropriate period of time and shall bear all the associated costs.

14.4. If the Supplier has failed to undertake the required rectification of the defect in a timely manner or successfully at all, Selectron can make a deduction from the contractual remuneration corresponding to the reduced value. In the case of significant defects, Selectron may also at its discretion withdraw from the contract without financial consequences for Selectron and reclaim payments made. In return, Selectron shall return all the deliverables (goods, products, services) it has received during performance of the contract to the Supplier.

14.5. Defects must be reported within 60 days of their discovery. Warranty rights shall expire, unless agreed otherwise in the contract, within 24 months of delivery or acceptance. After the remedy of reported defects, the deadlines for spare parts shall recommence. Claims against deliberately concealed defects may be asserted for ten years from delivery and/or acceptance.

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## 15. Rights of Use of Standard Software

15.1. The protection rights of the standard software supplied by the Supplier shall remain with the latter or its licensor. Insofar as third parties are entitled to rights, the Supplier shall guarantee that it has the necessary rights of use and sale.

15.2. Selectron shall acquire the non-exclusive right to the use of the standard software to the extent agreed or implied in the contract. The right to use the standard software shall be granted depending on the agreement either without limitation in time for a specified or unspecified (until notice of termination) period of time. If the right of use is without limitation in time, it shall also be transferable.

15.3. Selectron can make copies of the standard software for backup and archiving purposes. The use of standard software is not linked to a particular data processing system.

15.4. License provisions of the manufacturer shall be valid insofar as they are mentioned in the contract and do not contain any contradictions of the same, of these Terms and Conditions of Purchase and of the other integral parts of the contract.

## 16. Rights to Development Results

16.1. All property rights, in particular, all copyrights relating to the work results from services provided by the Supplier or by third parties involved by it (cf. para. 8) shall belong exclusively to Selectron and shall be transferred to the latter by the Supplier. This applies, in particular, to copyright usage rights (Art. 10 of the Swiss Copyright Act. URG), such as the right to produce, offer and otherwise distribute copies of a work, the right to first-time publication (Art. 9 (2) URG) and the exclusive right to alteration and creating derivative works (Art. 11 (1) URG), including the right to further development and in the case of software, the right to partial or complete association with hardware and/or with other software. The transfer of rights shall be applicable worldwide and to the greatest possible extent pursuant to the applicable statutory provisions. If the transfer of property rights, in particular copyrights, is not possible, Selectron shall be granted the greatest possible exclusive entitlement to the work results under applicable law, enabling it to dispose thereof as an asset associated with it.

16.2. All rights to any designs and inventions, including improvements, which are made within the framework of a contract by the Supplier's employees or those of third parties involved by it (cf. para. 8), whether alone or in cooperation with employees of Selectron, shall be conceded exclusively to Selectron and shall be transferred to it regardless of the protection capability and/or the patentability. The right to designate the inventor shall be reserved in accordance with Art. 6 of the Patent Act (PatG).

16.3. All documents and materials produced by the Supplier or by third parties involved by it (cf. para. 8) in fulfillment of the contract, whether in written or in machine-readable form, such as in particular, development documentation and the source code of software, shall become the property of Selectron. Insofar as the Supplier is in possession of such documents and materials, it shall utilize these for Selectron, solely limited to purposes in connection with the respective contract. Insofar as such documents and materials are no longer required by the Supplier, they shall be surrendered to Selectron or destroyed irrevocably at its request.

16.4. Insofar as, in connection with the services to be performed within the framework of a contract, the Supplier uses existing technologies, tools or other materials (for example, programs, program routines, modules, templates, documentation, etc.) which it already had at the time of the conclusion of the relevant contract, the existing rights thereto shall remain with the Supplier. Selectron shall have those rights of use of such technologies, tools or other materials necessary for the intended use and exploitation of the work results produced by the Supplier for Selectron within the framework of the contract concerned. For work results which consist of the alteration or a derivative work of existing technologies, tools or other materials of the Supplier, however, para. 16.1 and 16.2 shall apply above, in other words, if there are independent rights to the altered version or derivative work of the existing technologies, tools or other materials, these rights shall be conceded and transferred exclusively to Selectron.

16.5. Prior to the integration of existing technologies, tools or other materials within the meaning of the above para. 16.4, in particular, of software libraries of third parties, the Supplier shall be under an obligation to inform Selectron with regard to licensing and not to use such technologies, tools or other materials without the consent of Selectron.

16.6. Both Parties shall be entitled to exploit in any way expertise which cannot be protected, for example, ideas, concepts, methods or general findings and experiences which form the basis of development results produced in fulfillment of a contract and which have been produced by the Supplier's employees or those of third parties involved by it (cf. para. 8), whether alone or in cooperation with employees of Selectron, subject to full respect for the duty of confidentiality in accordance with para. 18 and subject to full respect for the rights of Selectron to the work results in accordance with para. 16.1 and 16.2 and of the Supplier in accordance with para. 16.3.

16.7. However, the Supplier shall not be entitled to pass on to third parties or to otherwise grant third parties access to information, data or documents, whether in written or machine-readable form, which it either produces within the framework of a contract or has been provided with by Selectron, or complete or partial copies thereof, and regardless of whether these are available in hardcopy form or as electronically stored data.

## 17. Infringement of the Third Party Rights

17.1. The Supplier shall guarantee that the property rights of Third Parties, such as in particular, copyrights, patents, trademarks and designs, are not infringed in connection with the performance of the contract and the deliverables (goods, products, services).

17.2. If third Parties assert claims in connection with the performance of the contract and/or the deliverables (goods, products, services) provided by the Supplier or third parties involved by it (cf. para. 8) against Selectron on account of the infringement of property rights, such as patents, copyright, trademarks, performance protection claims, etc., the following shall apply:

17.2.1. The Supplier shall at its own expense assume the judicial or extrajudicial defense of such claims, provided that Selectron notifies the Supplier in writing of the claims in good time, gives the Supplier all the information available to Selectron which is necessary for the defense of third party claims, and if needed affords the Supplier further support to the extent reasonable for Selectron;

17.2.2. In any court proceedings in which Selectron is involved, Selectron shall defend the claims in agreement with the Supplier, which in particular, shall reserve the right to decide on a settlement;

17.2.3. Insofar as Selectron conducts the proceedings in accordance with the Supplier's instructions, the Supplier shall reimburse all court costs, lawyers' fees and other costs incurred by Selectron in connection with the defense of such claims;

17.2.4. In the absence of corresponding instructions from the Supplier, Selectron shall defend the claims at its own discretion. With regard to the allocation of costs, para. 17.2.3 shall apply analogously;

17.2.5. The Supplier shall indemnify and hold Selectron harmless from all licensing, compensation, reparation and other claims due to the infringement of rights of third parties arising from final judgments or from settlements, provided that Selectron has given it the opportunity to decide on the settlement in accordance with para. 17.2.2 above.

17.3. If property rights of Third Parties have been infringed, the Supplier shall substitute or alter the deliverables (goods, products, services) concerned while maintaining their contractually agreed characteristics such that there is no longer an infringement of property rights. If Selectron agrees, the Supplier may instead obtain for Selectron the right to further use and to further development while assuming all associated costs.

## 18. Confidentiality

18.1. The Parties shall be under an obligation to treat confidentially all information, data and documents from the business area of the other contractual party which is passed to them, to which they are given access or which otherwise comes to their knowledge or into their possession ("Confidential Information") and, subject to para. 18.2 below, neither to pass it, bring it to the knowledge of, or otherwise make it accessible to Third Parties. Furthermore, the duty of confidentiality of the Supplier and the Third Parties involved by it (cf. para. 8) also relates to all information, data and documents compiled by them for Selectron, for which Selectron is exclusively deemed the owner of the information.

18.2. The Parties shall be under an obligation to oblige their employees and any Third Parties involved by them and their employees to likewise maintain confidentiality in accordance with para. 18.1 above before they grant them access to Confidential Information or bring such information to their knowledge. The Parties shall only make the Confidential Information accessible to their employees and any Third Parties involved by them insofar as this is necessary within the framework of the fulfillment of the respective contract. Selectron shall be entitled to request that the relevant employees of the Supplier and/or of the Third Parties involved by it sign a personal confidentiality agreement in duplicate beforehand, a copy of which must be issued to Selectron immediately.

18.3. The duty of confidentiality shall already apply before the contract is concluded and shall continue beyond the termination of the contract, as long as one Party has a legally protected interest in confidentiality.

18.4. Exempted from the duty of confidentiality in accordance with the above para. 18.1 are information, data and documents which

– At the time of conclusion of the contract were already public knowledge or

– Were public knowledge for the duration of the contract without one of the Parties infringing its duty of confidentiality, or

– Are lawfully assigned to a contractual party by a Third Party without being subject to a duty of confidentiality.

## 19. Liability

19.1. The contractual parties shall be liable for the damage caused by them, their auxiliaries and third parties involved by them to the other contractual party in connection with the contractual relationship according to legal regulations.

19.2. Insofar as the Supplier is responsible for a product defect, it shall be under an obligation to indemnify and hold Selectron harmless from claims for damages by third parties at the first request, if the Supplier is not liable itself in the external relationship. Costs incurred by Selectron as a result of product recall shall be borne by the Supplier.

## 20. Compensation / Invoicing / Terms of Payment

20.1. Prices for goods and products shall be regarded as fixed prices. The Supplier shall perform services at fixed prices or on a time and material basis with a cost ceiling (maximum price), wherein compensation for all services to be performed for fulfillment of a contract shall be contained. Any information, for example, in offers about the level of expenditure such as, for example, the number of hours or man-days, is solely for calculation purposes.

20.2. Prices are quoted in Swiss Francs and include all incidental costs such as installation and documentation costs, the costs of instruction, expenses, license fees, packaging, transport and insurance costs calculated free at the place of destination (cf. para. 6.3) and the public levies applicable when the contract is signed, but excluding sales tax.

20.3. If the Supplier performs services on a time and material basis, together with the invoice it shall supply a service report documenting the services and the expenses of each person engaged for each day.

20.4. Invoicing shall take place after performance and/or — insofar as provided for in the contract — after acceptance of the invoiced deliverables (goods, products, services). Invoices shall be payable within 30 days of receipt. The right for deviating agreements in the contract shall be reserved, in particular, any payment schedule.

## 21. Miscellaneous

21.1. If provisions of these Terms and Conditions of Purchase and/or the contract are, or become, legally invalid in whole or in part, this shall not affect the legal validity of the remaining provisions. In such cases, the contractual parties shall agree to a provision which corresponds as closely as legally possible to the economic result of the invalid provision.

21.2. Rights and obligations arising from the contractual relationship may not be assigned, pledged or transferred to third parties without the prior written consent of the other contractual party. This consent shall not be refused without good reason.

## 22. Applicable Law and Place of Jurisdiction

22.1. These General Terms and Conditions of Purchase and the entire legal relationship between Selectron and the Supplier shall be subject to Swiss substantive law, in particular, the Swiss Code of Obligations, to the exclusion of the United Nations' Convention on Contracts for the International Sale of Goods and the Hague Convention on the Law Applicable to Contracts.

22.2. The courts at the respective headquarters of Selectron, currently Lyss (Canton of Bern), have exclusive jurisdiction for all disputes arising from or in connection with the legal relationship between Selectron and the Supplier.

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