



## GENERAL TERMS AND CONDITIONS OF PURCHASE

### I. DEFINITIONS

1. **PO** – the PO will be concluded by issuing the Purchase Order and all listed documents mentioned in the Purchase Order, and any special agreements made between Buyer and Seller;
2. **buyer** – means the party placing an order, being the legal entity as mentioned in the Purchase Order, as well as his legal successors in title, COMES S.A. Romania;
3. **seller** – means the party who delivers the products;
4. **PO value**- price payable to the Seller by the Buyer under the PO, for the full and proper performance of all obligations;
5. **products**- equipments, machinery, any other goods contained in the PO, which the seller is obliged by PO to provide to the buyer;
6. **services** - services related to the delivery of products, activities related to the supply of products, such as transportation, insurance, installation, commissioning, technical support during the warranty period and any other similar obligations of the seller by PO;
7. **origin** – place where products were made, manufactured. The products are manufactured when the process of manufacturing, processing or assembly of components major and essential results in a new product, commercially known, which is different in its basic characteristics, purpose or utility, from its components. Origin of products and services can be different from the nationality of the Seller;
8. **final destination** - place where the Seller is required to provide products;
9. **force majeure** - an event beyond the parties' control, which is not due to error or fault by the parties, which could not be foreseen on the date of signing PO, and which renders impossible the execution and fulfillment of the PO; such events are: wars, revolutions, fires, floods or other natural disasters, restrictions following quarantine, embargo, the list is not exhaustive, but declarative. It is not considered force majeure an event similar to those above which, without creating an impossibility of execution, makes extremely expensive the fulfillment of obligations of either party.

**II.** These General Terms and Conditions of Purchase (GCTP) are an integral part of any Order placed with the Seller by COMES as buyer in regards with the supply of any “Goods” and/or “Services”. The acceptance of the order by the seller will be made in the purchase conditions of COMES SA, which will have priority over the general conditions of the seller.

### III. SUBJECT AND VALUE OF PO:

**Art. 2.1.** Seller will confirm acceptance of the purchase order issued by the Buyer within maximum two days from its submission. If during this time, the seller has no objections to buyer’s GTCP, it is considered to be accepted by the Seller.

**Art.2.2.** The buyer must pay the seller the agreed price for products delivered in compliance with the PO.

**Art.2.3.** Price agreed to be paid to the seller by the buyer is the one agreed in the purchase order.

**Art.2.4.** For orders delivered late, over the term agreed between the parties, penalties will be calculated for each day of delay in amount of 0.5% per day, not more than the total order value.

#### **IV. QUALITY REQUIREMENTS**

**Art.4.1.** Seller is responsible for the quality of the products manufactured and provided by him, and undertakes to implement a quality assurance system adapted to methods and criteria defined by the technical documents and standards.

**Art.4.2.** The products supplied under the PO will meet technical and quality standards in force and, if necessary, standards or other regulations approved in the country of origin.

#### **V. RECEPTION, INSPECTIONS AND TESTS**

**Art.5.1.** The buyer or his representatives are entitled, if they express in writing the intent to inspect and / or test the products, to verify their compliance with the technical quantitative and qualitative parameters, before delivery, at seller' site.

**Art.5.2.** If any of the inspected or tested products does not meet the specifications, the buyer is entitled to reject it, and the seller shall, without altering the PO price:

- a) replace the products / services rejected as non-compliant within 5 days;
- b) make any necessary changes to the products / services to meet the technical specifications.

The buyer has the obligation to notify, in writing, the seller, about the identity of its authorized representatives to perform reception, tests and inspections, if provided in Art.5.1.

**Art.5.3.** Inspections and tests of the final quantitative and qualitative reception will be made according to standards and regulations applicable to the products, at buyer' site by a committee appointed for this purpose, within 7 working days of delivery.

**Art.5.4.** Buyer' right to inspect, test and, if necessary, to reject will not be limited or delayed because the products have been inspected and tested by the seller, with or without participation of a buyer representative, prior to their delivery to the final destination.

**Art.5.5.** Articles 5.1.-5.4. will not release the seller from its obligation to undertake the warranties or other obligations under the PO.

**Art. 5.6.** Certification by the buyer that the products / services have been partially or totally delivered shall be at the buyer' site upon receipt. Any quantitative and qualitative complaints will be made in writing within 10 days of delivery of products / services, the seller being obliged to replace defective products within 5 days of receiving the complaint, otherwise the seller has the obligation to return the amounts already received, in maximum 3 days. If the seller does not return the amounts already received within that period, the seller will pay penalties in the amount of 0.2% per day of delay applied to the amount of the obligations not-fulfilled.

#### **VI. PACKING AND MARKING**

**Art.6.1.** (1) Seller is obliged to pack the products so to face, without limitation, rough handling during transportation, transit and exposure to extreme temperatures, sun and precipitations that may occur during transportation and outdoor storage, so to reach the final destination in a good condition.

(2) If packing of weights and volumes are in boxes, the seller shall take into account, where necessary, appropriate distance to the final destination of the products and the absence of heavy handling facilities at all points in transit.

**Art.6.2.** All materials for packaging the products and all materials necessary for the protection of packages (wood pallets, protective sheets, etc.) remain the property of the buyer.

## **VII. DELIVERY AND DOCUMENTS ACCOMPANYING THE PRODUCTS/ SERVICES**

**Art.7.1.** Seller is obliged to deliver the goods, respecting delivery dates in the purchase order.

**Art.7.2.** Seller will send to the buyer the documents that accompany the products:

- a) commercial invoice;
- b) quality certificate;
- c) warranty guarantee;
- d) conformity declaration;
- e) any other supplementary documents requested by means of the purchase order.

**Art.7.3.** If the seller delays delivery of products with more than 10 days, the buyer shall be entitled to declare rightful termination of the PO, by transmitting a notification in this regard to the seller without fulfilling any further formalities and without court intervention, and to claim penalties and / or damages. In this case, the PO terminates upon receipt of notice of termination by the seller.

## **VIII. TRANSPORT**

**Art.8.1.** Seller shall take all necessary measures in order to transport the products in good condition at the buyer, if the purchase order is not made any statement on compulsory insurance of transport provider, transport and delivery terms are DDP COMES Savinesti, Neamt Romania.

## **IX. WARRANTY – LIABILITY**

**Art.9.1.** Seller shall have the obligation to guarantee that the products supplied under the PO are new, unused, and incorporate all recent improvements in design and material structure, unless it is otherwise provided in the PO. The seller is also obliged to ensure that all products supplied under PO will not have any defects due to materials or workmanship or to any other action or omission of the seller and that all products will work according to their purpose in normal operation.

**Art.9.2.** If technical standards do not provide a higher warranty period, the warranty granted to products by the seller is 24 months, the period will run from signing the minutes of final acceptance of the goods, depending on the fact that products will follow instructions on handling, storage, operation and maintenance. This period will be mentioned in the purchase order and confirmed by the seller and will be provided in the warranty certificates accompanying the products.

**Art.9.3.** The seller guarantees the buyer against all apparent and hidden defects, all defects, especially, but not limited to, faulty design, compliance, achievement or malfunction.

**Art.9.4.** The buyer is entitled to notify the seller, in writing, about any complaint or claim that arises under this warranty within 10 days of discovering the deficiency. All costs related to displacement of seller's employees are borne by the seller. Repairs of products will take place at the buyer's site.

**Art.9.5.** Upon receipt of such notification, the seller is obliged to remedy the defect or, if necessary, replace the product within 5 days, without additional costs to the buyer. Products which, during the warranty period, replace the non-compliant ones, benefit from a new warranty period, which begins on the date of product replacement. If the case of remedying the faults, the guarantee period is automatically extended by the period elapsed from the fault notification to remedy of faults.

**Art.9.6.** If the seller, after having been notified, fails to replace the product within the agreed period, the buyer has the right to take measures to replace on the risk and expense of the seller and without bringing any prejudice to any other rights the buyer may have against the seller.

**Art.9.7.** If, in a detailed analysis of quality of product provided in terms of the material used and its chemical composition, the buyer finds that the product does not meet all quality requirements, the seller will be notified within 10 days about this non-compliance. If the seller, after having been notified, fails to replace the product within the agreed period, the seller is entitled to purchase products / materials / equipment from other suppliers in order to ensure continuity of production cycle and fulfill his obligations, and any unrealized price or additional costs will be borne by the seller, without bringing any prejudice to any other rights the buyer may have against the seller.

## **X. PAYMENT TERMS**

The payment term is the result of negotiations between the parties and is determined by the nature of the goods / services being expressly accepted by both parties. The invoice will be issued under firm purchase order issued by the buyer. Depending on the value of each purchase order, the parties may, by mutual agreement, set another payment schedule, to be specified in that purchase order. During the resolve of quantitative and / or qualitative complaints, payment of the invoice issued by the seller shall be suspended until resolution of complaints received from the buyer.

## **XI. MAIN RESPONSIBILITIES OF THE SELLER**

**11.1.** Seller undertakes to fabricate and deliver products to the standards and performances presented in purchase order / technical proposal, in the manufacturing schedule submitted in the purchase order, or in the technical proposal that will become addendum to the PO and will be part of it.

**11.2.** If during performance of the PO, the seller does not meet the delivery date, he is obliged to notify this case to the buyer, with 10 days prior to the due fulfillment of the PO obligations and to request written consent of the buyer on the amendment of delivery date, for the buyer to analyze and communicate to the seller whether acceptance or refusal of the delivery date amendment.

**11.3.** In case the seller delays delivery of goods with more than five days from the date mentioned in the purchase order, the buyer is entitled, on the one hand, to declare rightful cancelation of the purchase order, sending by any means of communication (mail, courier, fax, e-mail) a notification in this regard to this seller without fulfilling any further formalities and without court intervention, in this case the purchase order being canceled at receipt by the seller of the cancelation notification, and the seller being obliged to pay consequently damages to the buyer not less than the amount of 50% of the total purchase order, and on the other hand to purchase products from other suppliers in order to ensure continuity of production cycle and fulfillment of his obligations, and any unrealized price or additional costs to be borne by the seller.

**11.4.** Seller undertakes to confirm the purchase order within 2 (two) days after its submission by the buyer. If in this period of time, the seller doesn't have any objections to these general conditions for purchase, are considered to be accepted.

**11.5.** The seller undertakes to compensate the buyer against any: claims and lawsuits resulting from infringement of intellectual property rights (patents, names, trademarks, etc.), related to the equipment, materials, installations or machinery used for or in connection with the products purchased, as well as against any action that may alter the image of the buyer, the latter being entitled to recover moral damages through legal action.

## **XII. MAIN RESPONSIBILITIES OF THE BUYER**

**12.1.** Buyer undertakes to receive the products on terms and conditions mutually agreed with the seller.

**12.2.** Buyer undertakes to pay the price of products to the seller according to terms and conditions agreed in the PO.

**12.3.** Buyer undertakes to ensure availability in the account on the due dates required in PO terms relating to payment of the price of products / equipment / services.

**12.4.** If the buyer does not pay the invoices within agreed Chap. X, then buyer is required to pay a rate of 0.5% applied to the unpaid obligations in due time, for each day of delay.

**12.5.** The amount of penalties may not exceed the value of obligation not-executed.

## **XIII. TERMINATION OF PO**

**13.1.** The PO terminates by operation of law, without any intervention of an arbitral tribunal / court, where one of the parties:

- does not fulfill an obligation essential object of the PO payment as provided and thereby prevents performance of the PO;

- is declared incapacitated to make payments or initiated liquidation proceedings (bankruptcy) before start of the PO;
- assigns its rights and obligations under the PO without approval of the other party;
- within 30 days of receipt of the notification by which it has been advised on not performed or improperly performed of its obligations either incumbent;
- at the period of time specified in the PO when it was terminated unilaterally by one party;
- if the force majeure exceeds 30 days and the parties do not agree to renegotiate the PO.

**13.2.** Termination of the PO will have no effect on already existing obligations between the parties.

**13.3.** The provisions of this chapter do not remove responsibility of the party that culpably caused termination.

**13.4.** The parties may agree on the possibility of termination of the PO by simple agreement of both parties, in writing.

#### **XIV. FORCE MAJEURE**

**14.1.** Force majeure is an event beyond the control of the parties, not due to error or fault which could not be foreseen when concluding the PO, and making impossible the execution and fulfillment of the PO; such events are: wars, revolutions, restrictions following quarantine, embargo, the list is not exhaustive, but declarative. Are not considered force majeure strike or any other event similar to those above which, without creating an impossibility of execution, makes extremely costly the fulfillment of obligations of a party.

**14.2.** Force majeure will be established by a competent authority, which will issue a proof document in this regard.

**14.3.** Force majeure exempts the parties from fulfilling obligations under the PO throughout the period in which it acts.

**14.4.** Fulfillment of the PO will be suspended during the force majeure, without prejudice to the rights of the parties were entitled to until its appearance.

**14.5.** The party invoking the force majeure is obliged to notify the other party within two days of the occurrence of such situations and completely its production, and take all measures at its disposal to limit the consequences.

**14.6.** If force majeure is or is expected to act for more than 30 days, each party shall be entitled to notify the other party termination of the PO, without any of the parties can claim damages from the other, but only payment of benefits met by that time.

#### **XV. LITIGATION**

**15.1.** The buyer and the seller shall make every effort to resolve amicably by direct negotiations any disagreement or dispute that may arise between them under or in connection with the PO.

**15.2.** If after 15 days of starting these unofficial negotiations, the buyer and the seller fail to amicably resolve the dispute, each party may request that the dispute be settled by the competent courts at buyer's site.

#### **XVI. CONFIDENTIALITY**

**16.1.** A party shall not, without the written consent of the other party:

- bring the PO or any provision thereof to third parties, except those persons involved in carrying out the PO;
- use the information and documents obtained or accessible to the duration of the PO, for any purpose other than to fulfill PO obligations.

**16.2.** Disclosing any information to individuals involved in performing the PO shall be confidential and shall extend to information necessary to fulfill the PO.

**16.3.** In case of breach of confidentiality by one party, that party will be liable to pay damages.

**16.4.** A party shall be exempt from liability for disclosure of information relating to the PO if information was disclosed after the written consent of the other party for such disclosure, or the party disclose the information under a legal obligation.

## **XVII. COMMUNICATION / NOTIFICATION**

**17.1.** For the purpose of the PO parties, any notification to the other one of them is valid accomplished if sent at the specified in the introductory part of the PO. Any communication between the parties relating to the execution of the PO must be submitted in writing. Any written document must be registered both when sending and when receiving.

**17.2.** Where notification is made by post it will be sent by registered letter with acknowledgment of receipt and it is considered to be received by the addressee on the date mentioned by the post office on the confirmation; if handed by courier service, it is considered received on the date specified on the AWB to confirm receipt.

**17.3.** If the notification is sent by fax, it is considered received on the first business day after it was sent.

**17.4.** Verbal notifications are not taken into account by either party, if not confirmed, through one of the ways set out in the preceding paragraphs. It is also accepted electronic correspondence by e-mail, as long as the other party acknowledges its receipt.

**17.5.** One party undertakes to notify the other party of any changes of the name and address of the company, its bank account number and bank within maximum 3 days from these changes occurred. The party agrees, also, to send a copy of the certificate issued by the Trade Register on these changes and company status within three days from the date of any such changes.

## **XVIII. FINAL PROVISIONS**

**18.1.** The parties shall, in the performance of the PO, to agree on changing the clauses of the PO, by addendum, only in the event of circumstances that affect their legitimate commercial interests and which could not be foreseen at the time of the agreement. Modification cannot be pursued in its price and any products included in the technical proposal.

## **XIX. PO ASSIGNMENT**

**19.1.** The parties cannot assign its rights and obligations under the PO to a third party without the express written permission of the transferor.

**19.2.** Agreement referred to in the preceding paragraph shall be communicated by the transferee within 15 days from the date the grantor asked for this agreement; otherwise it is presumed that the transferee does not approve the cession PO.

## **XX. FINAL TERMS**

**20.1.** Changes of the PO are made only by addendums concluded between the parties.

**20.2.** The PO, together with these general conditions for purchase which form an integral part therein, represent the will of the parties and invalidates any verbal agreement, before or after its conclusion.

**20.3.** If parties break their obligations, and the party in default that suffer any prejudice does not claim for its right to request execution or money equivalent to that obligation does not mean that he renounced at his right.

## **XXI. PROTECTION OF PERSONAL DATA**

**21.1.** Pursuant to EU Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (hereinafter Regulation), COMES SA holds the quality of

operator.

**21.2.** In the context of the object of activity, for the purpose of managing the contract concluded between Comes and you, the purposes for which it is most likely that COMES will ask for your consent are: marketing, advertising by promoting the most appropriate COMES products and services, such as and the transmission by COMES of some commercial communications in this respect. In this sense, any document you send us and any communication must be made in compliance with the legal provisions of the Regulation, that the data subjects have given their consent and / or are aware of this transfer of personal data and that you only send us those documents that are adequate, relevant and limited to what is necessary to fulfill our duties.

**21.3.** We will process the data received strictly for the purpose of concluding / carrying out the contract, in a way that ensures their adequate security. These data will be collected, recorded, organized, structured or modified, extracted, consulted, used, disclosed by transmission for the purpose of concluding / carrying out the contract.

**21.4.** In order to fulfill the processing purposes, COMES SA may disclose certain categories of personal data to the following categories of recipients: the data subject and / or its legal representatives, COMES SA representatives, judicial authorities or other public authorities of any kind - to the extent where necessary.

**21.5.** COMES SA attaches great importance to your personal data and understands to ensure their security during processing activities.

**21.6.** Under the conditions provided by the legislation on the processing of personal data, you have the following rights regarding the collection and processing of personal data:

- the right to information, respectively to receive details regarding the processing activities performed by Comes SA according to those described in this document;
- the right to access data, respectively the right to obtain confirmation from Comes SA regarding the processing of personal data, as well as details regarding the processing activities;
- the right to rectification, respectively to obtain the rectification by Comes SA of inaccurate data, as well as the completion of incomplete data;
- the right to delete the data insofar as the conditions provided by law are met;
- the right to address the National Authority for the Supervision of Personal Data Processing or the competent institutions, insofar as you consider necessary.

## **XXII. OTHER TERMS**

**Contractual language:** All documents (technical leaflets, letters, invoices, all calculation bases and results, manuals, drawings, etc.) will be written in English. If laws, regulations, norms requests the availability of a certain language version of specific documents they have to be issued in accordance to these laws, regulations, norms by the party which has to issue the document.

**Operational and maintenance documents:** All operational and maintenance manuals, drawings, programs etc. are required to be written in English language and in Romanian language.