

# GUTOR GENERAL TERMS AND CONDITIONS OF CONTRACT

## FOR THE SUPPLY OF AC & DC UPS SYSTEMS AND SERVICES

### 1. General

The scope of supply for AC and DC UPS systems ("Equipment") and/or Services ("Services"; hereafter together referred to as "Work") shall be determined by the written agreement between both parties. All Work will be performed at the request of Buyer, and will be more specifically described in, and authorized by, a Purchase Order. Each Purchase Order, and any attachments thereto, that are issued by Buyer, will be incorporated into and made a part of this Agreement. Gutor shall only accept Purchase Orders that do not establish new or conflicting terms and conditions from those set forth in this Agreement. Gutor may accept Purchase Orders incorporating special project terms and conditions, which have been separately and expressly agreed upon in writing by the parties. In the event of any conflict between a Purchase Order and the terms of this Agreement, the terms of this Agreement shall always prevail. In the event of any conflict between the offer and the terms of this Agreement, the terms of the offer shall always prevail.

### 2. Offers

Gutor's offer shall be binding for 90 days after the date of issue, unless otherwise defined in the offer. The issue date is the date on which the document has been signed by Gutor.

### 3. Coming into force

The agreement shall only come into force once a Purchase Order for the Work or portion thereof is issued by Buyer and the same is accepted by Gutor and until advance payment is received by Gutor, if such advance payment is agreed.

### 4. Prices / Deliveries and Dispatches

All prices shall be EXW, including packing, sales tax or other taxes applicable in Switzerland for export. No other taxes are included in our prices. Any additional charge, such as, but not limited to, freight charges, insurance premiums, transit fees, import and other permits costs shall be borne by the Buyer.

Such prices are firm for the duration of the agreement and are established in accordance with the regulations in force at the date of establishing the agreement. In case of any changes in these regulations which may in any way economically or materially affect the performance by Gutor of its obligations, the corresponding agreement provisions such as increase of prices and extension of delivery time shall be modified accordingly.

All certification and legalization of any document required for importation will be issued on request and will be invoiced separately. If Gutor is also responsible for supervision of commissioning, unless otherwise agreed, the Buyer shall pay the agreed allowance and any

incidental costs required, e.g. travel costs, transport costs whatsoever to and in the country of destination, living costs, etc.

Work shall be delivered EXW (INCOTERMS 2010) Switzerland, unless otherwise expressly agreed upon by Gutor and Buyer in writing. Gutor shall make no insurance policy covering the Buyer's risk, unless this has been agreed upon in writing. On request, dispatch will be handled by Gutor at costs. The Buyer will be charged for any expenses incurred to Gutor in this connection.

### 5. Payment

Payments shall be made by the Buyer at Gutor's domicile through confirmed Letter of Credit (L/C), without any deduction for cash discount, expenses, taxes levied, fees and duties.

Unless otherwise agreed, payment for Equipment shall be made within 30 days from the date of invoice and shall be paid in the following preferred instalments:

- 15% as advance payment after receiving the order acknowledgement by the Buyer,
- 85% after Gutor's notification that the Equipment is ready for dispatch.

For Services only:

- 100% after Gutor's commissioning report signed by Buyer on site.

If advance payment is not received, Gutor will stop working on the order and shall not be held liable for delays. Payment shall be deemed effected as soon as Swiss Francs have been made freely available to Gutor at its domicile. In cases where bills of exchange arrange payment after Gutor's agreement has been obtained, the Buyer shall pay the cost of discounting of such bills, bill of exchange taxes and collection charges. The Buyer shall observe and adhere to the agreed payment schedules at all times. Buyer shall not postpone payments because of delays or stoppages in transport, delivery, erection, commissioning or taking over of the Work or Services where these delays and/or stoppages have occurred due to circumstances beyond Gutor's control. Similarly, all payment schedules and commitments shall be fully and promptly observed and adhered to, where unimportant components are missing, and if post-delivery work is not prevented by the absence of such components and the Buyer is able to put the delivered Work into safe operation without grave consequences. In such cases, Gutor shall endeavour to deliver any such missing components at the earliest possible time. If the advance payment or the contractually agreed securities are not provided in accordance with the terms of the contract, Gutor shall be entitled to adhere to or to terminate the contract, and shall in both cases be entitled to claim damages. If the

## **GUTOR GENERAL TERMS AND CONDITIONS OF CONTRACT**

---

Buyer delays a further payment for any reason, or if Gutor is seriously concerned that it will not receive payments in total by the due date because of circumstances having taken place since entering into the contract, Gutor, without being limited in its rights provided by law, shall be entitled to refuse the further performance of the contract and to retain any Work ready for dispatch until new terms of payment and delivery have been agreed and until Gutor has received satisfactory securities. If such an agreement cannot be reached within a reasonable time, or in case Gutor does not receive adequate securities, Gutor shall be entitled to terminate the contract and to claim damages. If the Buyer delays any payments, the Buyer shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due at a rate prevailing at the Buyer's domicile, but not less than four per cent (4%) over the current interest rate (for LIBOR) of the Swiss National Bank at the time. The right to claim any further damages is reserved by Gutor.

### **6. Passing of title and risk**

Risk of loss to Equipment shall pass to Buyer in accordance with the Delivery and Dispatch terms set forth above in Section 4. Gutor shall be liable for any damage to the Equipment, which occurs before risk has passed to the Buyer. Title to the equipment shall pass to the Buyer upon complete payment.

### **7. Delivery time / Storage**

The acceptable and valid delivery schedule from Gutor will be sent with the Order Acknowledgement to Buyer. Delivery times set for Work can only be observed if all documents to be supplied by the Buyer, necessary permits and releases, especially concerning supply and dimensions, are received in time and if agreed terms of payment and other obligations of the Buyer are fulfilled. Unless these conditions are fulfilled in time, delivery time shall be extended appropriately; this shall not apply where Gutor is responsible for the delay.

If for any reason, the Buyer is unable to accept dispatch of the Work at the time when the Work is due and ready for dispatch, the Buyer shall so inform Gutor in writing and Gutor shall store the Work, safeguard it, and take all steps to prevent its deterioration during such storage and the Buyer shall be liable to Gutor:

- (i) if applicable, for that instalment of the Purchase Order Price that would have been paid in accordance with the Purchase Order had the Work been dispatched and
- (ii) for all reasonably justified costs, including insurance of doing so, and storage fees.

### **8. Liquidated damages**

In case of delay in the delivery of the equipment (not applicable for spare parts only) solely attributable to Gutor, Gutor shall pay as liquidated damages and as full and sole compensation and remedy for the delay in delivery, 0.5% of the value of the delayed equipment for each full week of delay. Such liquidated damages shall be limited to a maximum of 5% of the Contract Price.

### **9. Product Information**

All information, specifications and data contained in product brochures and price information presented by Gutor are binding only to the extent, that they are expressly included in the contract by reference and mutually agreed upon by Gutor and Buyer.

### **10. Drawings and descriptions**

Each party to the contract retains all rights to technical documents provided to the other. The party receiving documents recognizes these rights and shall, without previous written consent of the other party, not make these documents available to any third party, in whole or in part, nor use them for purposes other than those for which they were handed over.

### **11. Tests**

All products are subject to Gutor's standard production tests. If the Buyer requires special test procedures or a factory test, this will be carried out at the expense of the Buyer.

### **12. Warranties**

#### **12.1 General**

All Work supplied to Buyer will be new and free from defects in design, materials and workmanship. All Work will be performed by Gutor in a professional manner, consistent with the standard of skill and care exercised by qualified contractors on projects of comparable scope and complexity, in a similar location and in conformance with the requirements of this Agreement. Gutor warrants that it is sufficiently experienced, properly qualified, registered, licensed, equipped, organized and financed to perform the Work in compliance with the terms of this Agreement.

#### **12.2 Equipment Warranty**

The warranty period for Equipment is twelve (12) months from the date of commissioning, but no longer than eighteen (18) months from the date of notification that the goods are ready for dispatch, whichever occurs first. During this warranty period for Equipment, Gutor undertakes to repair and/or replace any part found to be faulty due to errors in design or manufacture, or to be made of faulty materials. Complaints of defects in Work delivered shall be made in writing, and without any delay, as soon as the defect is discovered, or seems to have been discovered. Equipment or parts may only be returned upon prior agreement in writing.

#### **12.3 Service Warranty**

For Services, if the repair is carried out on site by one of Gutor's service engineers, the warranty shall cover only the material and the effective working hour costs. Travelling time, expenses and board and lodging will be charged to the Buyer. In the event any deficiencies are discovered in the Services Work resulting from Gutor's failure to comply with the above standards and Buyer promptly notifies Gutor thereof in writing, but in no event later than thirty (30) days following completion of the Services, Gutor shall provide remedial Services to correct such deficiencies at no cost to Buyer.

## **GUTOR GENERAL TERMS AND CONDITIONS OF CONTRACT**

---

### **12.4 Exclusions and reductions**

In particular, the warranty does not cover defects arising from improper storage, Force Majeure events, alterations/modifications or repairs carried out by the Buyer or a third party without Gutor's consent in writing, normal wear and tear, or any other causes exterior to the relevant equipment, nor shall the warranty apply to defects arising either from equipment/materials supplied by the Client or when spares have been used other than those delivered by Gutor. The defective parts shall be forwarded to Gutor, carriage paid for repair or replacement. The defective parts remain the property of Gutor. For goods supplied by subcontractors, Buyer will ensure that all such goods carrying a manufacturer's warranty are registered with the manufacturer in Buyer's name. No other obligations for warranty or indemnity shall be accepted, unless specifically agreed upon in writing.

Gutor reserves the right to reject or reduce any warranty claims in case the commissioning of a Gutor system has not been done by a Gutor qualified service engineer, or under Gutor's supervision.

There are no other warranties, express or implied, by operation of law or otherwise, of Equipment, Services or Equipment sold or furnished under this Agreement or in connection herewith. Gutor disclaims all implied warranties of merchantability, satisfaction and fitness for a particular purpose. Gutor's express warranties will not be enlarged, diminished, or affected by and no obligation or liability will arise out of, Gutor's rendering of technical or other advice or service in connection with the Equipment. The foregoing warranties and remedies are exclusive and in lieu of all other warranties and remedies. The warranties set forth in this section constitute Gutor's sole liability and Buyer's exclusive remedy for any breach of such warranties.

### **13. Indemnity**

Each party shall indemnify and hold harmless the other party, its parent, subsidiaries, affiliated entities, and their respective officers, directors, employees and agents from and against such losses, damages, costs, claims, suits, judgments, expenses (including reasonable attorneys' fees) and other liabilities to the extent directly arising out of its own breach, performance or non-performance of, or failure to properly perform its obligations hereunder, and to the extent of its own negligence and wilful misconduct, including, without limitation, personal injury, death, and tangible property damage. A party's indemnity and hold harmless obligations as to any claim or suit within the scope of this clause shall be reduced to the extent of any concurrent fault, negligence or violation of law by the Buyer or any other party for whom Gutor is not responsible.

### **14. Intellectual Property Rights**

#### **14.1 Infringement of IP**

Gutor shall defend any suit or claim that may be instituted against the Buyer for alleged infringement of patents and trademarks relating to the Equipment furnished pursuant to the Work except to the extent that the claim or adverse final judgment is based on (i) specifications

Buyer provides to Gutor for the Equipment; (ii) code or materials provided by Buyer as part of the Equipment; (iii) Buyer running the Equipment after Gutor notifies Buyer to discontinue running due to such a claim; (iv) Buyer combining the Equipment with non-Gutor Equipment, data or business process; (v) use of, or access to, the Equipment by any person or entity other than an employee of Buyer or one of Buyer's affiliates; or (vi) Buyer altering the Equipment. If Gutor receives information concerning an infringement claim related to an Equipment, or Buyer's use of an Equipment is enjoined by a court of competent jurisdiction, Gutor may, at its expense and without obligation to do so, either (i) procure for Buyer the right to continue to run the allegedly infringing Equipment, or (ii) modify the Equipment or (iii) replace it with a functional equivalent, to make it non-infringing, in which case Buyer will stop running the allegedly infringing Equipment immediately. If neither procuring the right to continue the Equipment's use, replacing the Equipment with a functional equivalent, or modify the Equipment to make it non-infringing is available to Gutor on reasonable terms, then Buyer may return to Gutor, at Gutor's cost and expense, any infringing Equipment, and Gutor shall refund, in full, the pro-rata purchase price (depreciated on a 5 year straight line basis) of the returned Equipment. THE PROVISIONS OF THIS SECTION STATE THE EXCLUSIVE LIABILITY OF GUTOR AND THE EXCLUSIVE REMEDY OF OWNER WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY.

#### **14.2 Ownership**

Each party will retain all Intellectual Property Rights in their respective Intellectual Property Rights which are in existence at the date of this Agreement or come into existence after the date of this Agreement otherwise than in connection with this Agreement. Gutor will retain all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the supply of the Equipment and/or Services and there shall be no transfer of the such Intellectual Property Rights to the Buyer or any third party at any time.

#### **14.3 Licence to Use IP**

Subject to payment in full for the Equipment and/or Services, Gutor shall grant to Buyer a royalty free, non-exclusive, irrevocable license to use all Intellectual Property Rights necessary for the Buyer to enjoy the benefit of the Equipment and/or Services for the purposes of or in connection with Buyer's business.

### **15. Limitation of Liability**

Notwithstanding anything in this Agreement to the contrary and to the extent permitted by applicable law, (a) in no event shall either party, its officers, directors, or employees be liable for any form of incidental, consequential, indirect, special or punitive damages of any kind, or for loss of revenue or profits, loss of business, loss of information or data, or other financial loss, whether such damages arise in contract, tort or otherwise, irrespective of fault, negligence or strict liability or whether such party has been advised in advance of the possibility of such damages; and (b) the maximum liability of

## **GUTOR GENERAL TERMS AND CONDITIONS OF CONTRACT**

Gutor for any and all claims, losses, damages, costs and expenses arising from or on connection with this Agreement shall not exceed the amounts actually paid to Gutor under this Agreement. This clause shall specifically survive completion or termination of the Agreement.

### **16. Force Majeure**

Gutor shall not be liable for non-fulfilment or delayed fulfilment of the agreement as a result of a Force Majeure event (acts of God, flood or other weather conditions, factory shutdowns, war, riots, terrorism, intervention by the government or public authorities, fire, strikes or lockouts, export or import bans, non-deliveries or incomplete deliveries from sub-suppliers, shortage of labour, fuel or power or any other cause beyond the control of Gutor) which is likely to delay or prevent the manufacture and delivery of the goods sold. In such case, the Agreement shall be suspended during the entire duration of the Force Majeure event after a written notice sent by Gutor to Buyer. If such suspension lasts more than 60 (sixty) days, Gutor shall be entitled to terminate the Contract as per clause 18 "Suspension" hereunder.

### **17. Insurance**

Gutor shall, to the extent available, purchase and maintain during the term of this Agreement, insurance, as set forth below:

- (i) Worker's Compensation with statutory limits, and Employers' Liability Insurance;
- (ii) Commercial General Liability Insurance;
- (iii) Commercial Automobile Liability Insurance (including owned, non-owned and hired automobiles).

### **18. Suspension**

In the event of suspension of the performance of the Work at Buyer's request, Gutor shall be entitled to a reimbursement of direct and indirect expenses and costs, which were reasonably incurred by Gutor as a result of the suspension. Said charges and expenses shall include but not be limited to handling, storage, insurance and labour costs incurred by Gutor and its sub-suppliers or sub-contractors, financial costs such as extension of the validity periods of L/Cs, bank guarantees and insurance policies if any and more generally financial consequences resulting from the extension of time for completion, travel and living expenses of the personnel involved in the services, if any. Should this suspension last for more than 60 (sixty) days, then any Party shall be entitled to terminate the Contract and shall be indemnified as per the next paragraph.

### **19. Termination**

- (i) Any Party shall be entitled to terminate the Agreement a) in case the other party breaches any of its major obligations and fails to remedy it after a reasonable time, upon being served a written notice to do so by the Party willing to terminate, or b) after a suspension according to clause 18 or c) a "Force Majeure" event according to clause 16. In the event of

termination of the Agreement, Buyer will pay Gutor for:

- all works performed up to the date of termination;
  - all materials, goods and services reasonably ordered for the performance of the Agreement which should have been delivered to Gutor or of which Gutor is legally liable to accept delivery (such materials, goods or services shall become the property of Buyer upon such payment being made by him);
  - any other documented costs, including 15% for overhead costs.
- (ii) In case the Buyer terminates a Purchase Order previously placed with Gutor for convenience, he must pay to Gutor the following cost:

<b>Project Status upon receipt of PO cancellation notice</b>	<b>Percentage of PO value</b>
Engineering/Design	25
Approval return from client	40
Sub-orders placed	50
Material received	70
Production completed	100
Testing completed	100
Units ready for delivery	100

### **20. Notices**

Wherever under the Agreement one Party is required or permitted to give formal or legal notice to the other, such notice shall be deemed given when delivered in hand or by registered mail and addressed if to Gutor to Gutor Electronic LLC, Hardstrasse 74, CH-5430 Wettingen, Switzerland, if to the Buyer, to the address specified on the Purchase Order. Either Party to the Agreement may from time to time change its address for notification purposes by giving the other prior written notice of the new address and the effective date hereof.

### **21. Partial Invalidity**

Should any clause, obligation or requirement of the Agreement prove to be invalid or unenforceable, then the Parties shall be obligated to replace the invalid or unenforceable clause, obligation or requirement by valid or enforceable ones that come closest to the current intention of the contracting Parties. The effectiveness of the other clauses, obligations or requirements in the Agreement shall remain unaffected thereby.

### **22. Waiver**

No delay or omission by either Party to the Agreement to exercise any right or power hereunder shall impair such right or power or be construed to be a waiver thereof or of any exercise of a later right or power.

### **23. Export Control**

The Supply provided by Gutor under this Contract contains or may contain components and/or technologies from United States of America, European Union and/or other nations. Buyer acknowledges and agrees that the supply, assignment and/or usage of the Supply under this Contract shall fully comply with related applicable United

## **GUTOR GENERAL TERMS AND CONDITIONS OF CONTRACT**

---

States, European Union and other national and international export control laws and/or regulations.

Unless applicable export license/s has been obtained from the relevant authority and Gutor has approved, the Supply shall not (i) be exported and/or re-exported to any destination and party (may include but not limited to an individual, group and/or legal entity) restricted by the applicable export control laws and/or regulations; or (ii) be used for those purposes and fields restricted by the applicable export control laws and/or regulations.

Buyer agrees that the Supply will not be used either directly or indirectly in any rocket systems or unmanned air vehicles; nor be used in any nuclear weapons delivery systems; and will not be used in any design, development, production or use for any weapons which may include but not limited to chemical, biological or nuclear weapons.

If any necessary or advisable licenses, authorizations or approvals are not obtained, whether arising from inaction by any relevant government authority or otherwise, or if any such licenses, authorizations or approvals are denied or revoked, or if the applicable export control laws and/or regulations would prohibit Gutor from fulfilling any order, or would in Gutor's judgment otherwise expose Gutor to a risk of liability under the applicable export control laws and/or regulations if it fulfilled the order, Gutor shall be excused from all obligations under such order and/or this Contract.

### **24. Personal Data Protection**

The Parties shall at all times comply with the Personal Data Protection Act 2010 (Malaysia) and all binding regulations made thereunder (if applicable) or such other personal data protection laws as may apply to a Party.

To the extent that the Buyer discloses any Personal Data to Gutor in connection with the execution and/or performance of the Contract, the Buyer consents, and shall ensure that it has obtained the consent of any individuals to whom the Personal Data relates, to Gutor collecting and using the Personal Data as reasonably necessary to perform the Contract, including disclosing the Personal Data to sub-contractors or affiliates in or outside of Switzerland and Malaysia for the purpose of performing the Contract.

The Buyer shall promptly inform Gutor upon becoming aware of the withdrawal by any relevant individual of his/her consent to the collection, use and/or disclosure of such Personal Data. In the event that Gutor is, as a result of such withdrawal, unable to perform the Contract or unable to do so without incurring any material additional costs, the Buyer hereby agrees that Gutor shall be permitted to

terminate the Contract in accordance with clause 19(i), without prejudice to any claims for damages or any other remedy Gutor may have at law against the Buyer.

The Buyer acknowledges and agrees that Gutor shall act as the Buyer's data intermediary in respect of Personal Data of any third party (including employees, agents, contractors or customers of the Buyer) disclosed to Gutor in connection with the Contract. Gutor shall only process such Personal Data disclosed to it by the Buyer in accordance with the Buyer's instructions.

### **25. Final Provisions**

Any amendment or supplementation of the Agreement must be in written form and signed by the Parties.

The Agreement with these General Terms and Conditions of Contract constitute the entire agreement between the Parties with respect to the subject matter thereof and there are no representations, understandings or agreements relative thereto which are not fully expressed therein. The Agreement cancels and supersedes all prior agreements, proposals, letters of intent, negotiations and representations, whether oral or written, between the Parties relating to the subject matter hereof.

The Agreement shall be binding on the Parties thereto and their respective successors and assigns, but neither Party may, or shall have the power to, assign or transfer any rights or obligations under the Agreement without the prior written consent of the other Party, except that Gutor may transfer the Agreement to a Gutor Affiliate. Consent shall not be unreasonably withheld or delayed.

### **26. Applicable Law and Arbitration**

The Agreement shall be governed by and construed in accordance with the **laws of Switzerland**, excluding the United Nations Convention on Contracts for the International Sale of Goods.

The Parties shall endeavour to amicably settle any dispute, before any recourse to arbitration. If no amicable settlement of the dispute is reached after 60 days from a notice of dispute sent by a Party to the other, the Parties shall refer to arbitration by one or three arbitrators, in accordance with the latest Rules of Conciliation and Arbitration of the International Chamber of Commerce. Arbitration shall take place in **Zürich, Switzerland**, in the English language.

### **Gutor Electronic LLC**

Hardstrasse 74  
CH-5430 Wettingen  
Switzerland  
Phone: + 41 56 437 34 34  
Fax: + 41 56 437 34 44  
e-mail: gutor.info@schneider-electric.com  
www.gutor.com