



# HMS General Purchasing Conditions

**This is HMS** - HMS Industrial Networks AB (“HMS”) is a leading independent supplier of products for industrial communication. HMS’s products enable industrial devices to connect to different industrial networks and to be monitored and controlled remotely.

## 1. General

**1.1** These General Purchasing Conditions (the “**Conditions**”) shall, in their entirety apply to all orders submitted by the Purchaser as well as to all contracts that has been entered into in respect of sales of Products to the Purchaser, unless the parties expressly agree otherwise in writing. The Seller therefore hereby explicitly waives application of its own general and specific conditions of sale.

**1.2** Any condition stated in an offer or tender, in the confirmation of an order, in an invoice or in any other document provided by the Seller that is in breach of these Conditions shall not be binding for the Purchaser. If the Purchaser fails to object to such a condition, this omission shall not be interpreted as an acceptance, entirely or partially, of an alteration of these Conditions.

## 2. Definitions

**2.1** The “**Purchaser**” means HMS or another purchaser appointed by HMS, purchasing Products from the Seller.

**2.2** The “**Seller**” means a legal entity or a person that has entered into an agreement with the Purchaser, or to which/whom the Purchaser has submitted an order, regarding the Products.

**2.3** The “**Product**” means a contract-manufactured product, processed product or any other product under a purchasing contract or in an order between the Purchaser and the Seller.

**2.4** “**Specification**” means, including but not limited to, such specifications of the Product’s quality, function, performance, characteristics, field of application and standards and ethical code of behaviour that the Purchaser has given or dispatched to the Seller before or in connection with the order concerned. Specification shall also comprise any statement concerning the quality, performance, and characteristics of the Product that the Seller has given the Purchaser concerning the Product.

**2.5** “**Tools**” means all special models, jigs, fixtures, moulds or other tools or type-bound equipment supplied by the Purchaser that are required for the manufacture or inspection of the Product and, when applicable, of the general equipment.



**2.6** When either of the concepts “written” or “in writing” is used in these Conditions, it shall also be deemed to refer to faxes, email messages and EDI communication.

### **3. Orders**

**3.1** Orders shall only be binding for the Purchaser if they have been made in writing and in accordance with section 3.2. Verbal agreements or modifications must be confirmed in writing by the Purchaser in order to be binding. This shall also apply to additional deliveries and services. Failure to respond to proposals, requirements etc. from the Seller shall not constitute the Purchaser’s approval of the Seller’s proposal.

**3.2** The Seller shall within one (1) working days after having received the Purchaser’s order either confirm the order or reject it. If the Seller has neither confirmed nor rejected the purchase order within the said time period, the Seller shall be deemed to have accepted the purchase order. The Purchaser shall be entitled to, in its discretion, cancel orders up to the time the Purchaser receives the order confirmation.

### **4. Product standards**

**4.1** When applicable, each Product shall conform to the dispatched samples which have been approved by the Purchaser. The Purchaser’s approval of a sample of the Product only entails a limitation in the Seller’s liability to the extent that the Purchaser has observed any deviations from agreed Specification by examining the sample.

**4.2** The Seller warrants that the Product comply with the quality certification stated in the Purchaser’s order or in the Specification, as well as with those national and international directions and requirements relating to the Product at the time of delivery.

**4.3** The Seller warrants that the Product will not, when used in a normal manner, cause any bodily injury or damage to property for the Purchaser or its customers. During the contract period, the Seller shall sign and maintain an adequate product liability insurance policy, which shall be presented to the Purchaser within 7 days from the Purchaser’s written request.

**4.4** The Seller warrants that the Product fulfils those requirements in respect to traceability that are at any time stipulated in applicable legislation, as well as in any applicable ISO standard or in any other standard which the Purchaser has referred to in his order, and accepts the conditions stipulated in these standards as legally binding terms. Please find reference documents: <https://www.hms-networks.com/about/sourcing>

**4.5** The Purchaser operates in a market where the Products forms a part of end products which may be marked and sold in a global market by globally operating distributors. Therefore, the Seller warrants that the Products may be exported without restrictions, unless otherwise agreed in writing.



**4.6** The Seller warrants that the Product complies with the Purchaser's code of conduct, SA8000 (social certification standards for decent workplaces), and any code of conduct that the Purchaser may communicate from time to time that may be valid in a certain industry.

**4.7** The Seller warrants that the Product can be used in the relevant area of application without such use constituting, in any respect, an infringement of any existing patent, trademark, or any similar intellectual property right belonging to a third party. The Seller shall protect the Purchaser and his customers from any and all claims that may occur from such infringement, and shall indemnify the Purchaser for all costs and damage the Purchaser may suffer as a result of such infringement.

**4.8** The Seller shall, at the Purchaser's request, provide a delivery certificate which warrants the Product's complete conformity with the Specification.

**4.9** No changes related to the Product concerning its material, subcontractors, production process, production equipment, manufacturing technology, tools, methods, tests, manufacturing sites, quality-assurance systems, packaging or transfer of production to another facility may be executed without the Purchaser's written consent.

## **5. Spare parts**

**5.1** When the Product forms a part of an end product belonging to the Purchaser's customer, the Seller shall ensure that the Purchaser can fulfil the obligations to its customers regarding delivery of spare parts.

## **6. Tools**

**6.1** Tools that have been provided, paid for, or in any other way financed by the Purchaser are the Purchaser's property, and the Purchaser has the right to use them without any restrictions. Payment for Tools will be made in accordance with a separate agreement. For Tools or equipment under this section, the Seller shall use the document "Equipment hosted at Supplier", SPA-1010-115.

**6.2** Tools that are the Purchaser's property shall be marked by the Seller in such a way that it is obvious that the Tools belongs to the Purchaser, according to HMS instructions for marking of Tools. No Tools may be used on the behalf of a third party without the written consent from the Purchaser.

**6.3** The Seller shall handle and store the Tools in a safe manner, keeping the Tools apart from other tools that are not intended for manufacturing on the behalf of the Purchaser, and shall have an adequate insurance throughout the period of the contract.



**6.4** The Seller undertakes, at no cost for the Purchaser, to perform maintenance service and reparation of the Tools that are required in order for them to retain entirely satisfactory functions during the agreed service life of the Tools. The Purchaser is responsible for any alterations to the Tools that are the outcome of changes of the Product, as well as for the production of replacement Tools after the end of the Tools service life. Scrapping of Tools requires the Purchaser's written consent.

## **7. Inspection and monitoring**

**7.1** The Seller is aware that the Purchaser, when receiving a delivery, only examines the agreed identity and quantity of the Products and verifies absence of visible transport damages. Before dispatching the delivery, the Seller shall inspect that the Products comply with the Conditions. The Seller shall immediately report any defects on the Products to the Purchaser.

**7.2** The Purchaser shall be given access to the Seller's premises in order to inspect manufacturing and monitor measures as regards the Products, as well as to implement sampling procedures or perform any other investigations that may be required concerning, among other things, systems, processes, and products. The Seller shall provide the right for the Purchaser to inspect any subcontractors to the Seller regarding the Products. Any inspection measures executed under this section do not in themselves result in any limitations of the Seller's liability.

**7.3** Upon the Purchaser's request, the Seller shall provide such information and samples as may be required for the assessment of the Products quality.

**7.4** Once a contract has been signed or an order has been placed, the Seller is not allowed to make any changes to the Product without the Purchaser's written approval.

**7.5** The Seller shall immediately report all imminent changes regarding its business, company name, address or significant changes of ownership to the Purchaser, if the changes can possibly be assumed to affect the Purchaser.

**7.6** The Purchaser shall be entitled to receive relevant information about the Seller's financial status upon request.

## **8. Environmental aspects**

**8.1** The Seller undertakes to avoid or minimize adverse effects on the environment when performing his obligations under these terms. The Seller shall comply with any applicable environmental legislation. The Seller shall comply with all applicable EU rules and regulations, both as regards rules and regulations on raw materials and other rules and regulations, and at the Purchaser's request document the compliance. The foregoing applies to rules and regulations in other markets outside the EU, when the Purchaser has



stated that the Product will be sold in such markets. Further, the Seller shall, at the Purchaser's request and to a reasonable extent, contribute to provide information concerning the delivered Products to any relevant material database (e.g. IMDS).

**8.2** Until the Product has been delivered to the Purchaser, the Seller shall be responsible for complying with regulations for handling of hazardous goods regarding the Product.

**8.3** The Purchaser expects the Seller to fulfil the requirements in the European Community Regulation on chemicals and their safe use (REACH) and the EU directive RoHS.

**8.4** Upon request by the Purchaser, the Seller shall immediately send a list of all ingredients in the Products, the amount of all ingredients and information concerning any changes in or additions to such ingredients.

## **9. Packing and transport**

**9.1** The Seller warrants that the Product is packaged in such a way that it is safe for transportation, that it is preserved and protected during transport to the Purchaser and stored on the Purchaser's premises, in accordance with the Purchaser's instructions.

**9.2** The Seller is liable for any costs that may arise if the Seller, or anyone that is under control of the Seller, fails to comply with the instructions regarding dispatching, packaging, marking, etc. that are stated in the order or in these Conditions.

## **10. Deliveries**

**10.1** The terms of delivery shall be interpreted in accordance with the Incoterms in force at the formation of the order. If no specific delivery terms have been expressly agreed in writing, the Delivered Duty Paid (DDP) clause in Incoterms shall apply to the Purchaser's storage premises on Stationsgatan 37, 302 50 Halmstad, Sweden, or to a final destination as determined by the Purchaser.

**10.2** The terms "delivery time" and "delivery date" refer to the day, stated in the order, on which the relevant Products are to be in the Purchaser's hand at the place stated.

**10.3** If the delivery time in the order has not been stated as a specific date or a specific week, but as a number of days or weeks, the thus stated time of delivery shall be regarded as running from the day on which the order was made.

**10.4** With regard to the storage and delivery of Products, the Seller undertakes to apply the first in, first out system. Any Product delivered in a way that deviates from this principle shall be regarded as faulty.

**10.5** If the Products are not delivered within the time agreed, for another reason than stated under section 15, the Purchaser shall be entitled to claim liquidated damages. For



each commenced week of delay the Purchaser shall be entitled to five (5 %) per cent of the price as stated in relevant purchase order. The liquidated damages shall not exceed a total of twenty (20 %) per cent of the said price. Independently of the now said, the Purchaser shall always be entitled to cancel the relevant purchase order or parts thereof, provided that the delay is not insignificant.

**10.6** The Purchaser shall however, in addition to liquidated damages, be entitled to a higher amount of damages, if the Purchaser is able to verify that he has suffered damage in excess of the liquidated damages under section 10.5.

**10.7** The Purchaser's right to damages and/or cancellation in accordance with section 10.5 and 10.6 shall not prevent the Purchaser from claiming any other legal compensation to which the Purchaser may be entitled to under these Conditions or any applicable legislation.

**10.8** In case of a delivery before the agreed date of delivery, or if the delivery contain quantities in excess of those agreed on, the Purchaser shall have the right to return the delivery or parts thereof at the Seller's risk and expense.

## **11. Documentation**

**11.1** The marking of the Products, as well as the wording of delivery and consignment notes, shall be in accordance with the instructions issued by the Purchaser.

**11.2** The Purchaser's order number shall be stated on the invoice.

**11.3** At the Purchaser's request the Seller shall procure, and bear all costs for the procurement, any certificate of origin that the Purchaser may require.

## **12. Price and payments**

**12.1** Prices are fixed, unless otherwise agreed in writing. The Seller is not entitled to impose an invoicing charge or any other price increment that has not been agreed in writing by the parties.

**12.2** Prices in orders or contracts regarding the Products include packaging, delivery and transport assurance costs, unless otherwise explicitly agreed.

**12.3** If the parties have agreed on flexible prices, the price on the agreed date of delivery shall apply, even if the delivery does not take place within the agreed period of time.

**12.4** Invoices shall not be dispatched before the delivery has taken place.

**12.5** Unless otherwise agreed, payment shall be effected within sixty (60) days from date of complete and successful delivery of Products and the receipt of correct invoice.



**12.6** Payment of invoices does not entail the automatic acceptance of the delivered Products.

### **13. Warranties and remedies**

**13.1** The Seller warrants that the Products, during a period of twenty-four (24) months from delivery to the Purchaser, are free from any design, manufacturing and defects in materials and fulfil the requirements in these Conditions. However, the Purchaser shall always, and without any restrictions in time, be entitled to hold the Seller liable for any claim against the Purchaser by a third party on the basis of applicable product liability legislation or if the Purchaser is liable in relation to its customers after the expiration of the warranty period. When a Product has been replaced or rectified in accordance with this section 13, the warranty period of twenty-four (24) months shall apply from the date of replacement or rectification.

**13.2** The Seller is not responsible for faults and defects which the Seller is able to show to have been caused by the Purchaser's incorrect handling or storing of the Products, or if the Products have been used for a purpose for which the Product is not intended for.

**13.4** The Purchaser shall notify the Seller in writing of any breach of the warranty in section 13.1. Such notice shall be given without undue delay from the time the Purchaser became aware of the breach.

**13.5** In case of a breach of the warranty in section 13.1, the Purchaser shall be entitled to demand, in its discretion, (i) a replacement of the Product at the expense of the Seller, (ii) a rectification of the Product or (iii) a reduction of the purchase price. The Purchaser shall also be entitled to, at the Seller's expense, conduct controls of all Products of the same type as the Product to which the breach of warranty relates. In addition, the Seller shall indemnify the Purchaser against any and all losses, damages, injuries, and expenses that are due to a breach of the warranty in section 13.1, including third party claims.

**13.6** If, in the reasonable opinion of the Purchaser, there is a risk of interruption of production or delivery problems for the Purchaser in relation to a customer, the Purchaser has the right to conduct rectification by itself, at the expense of the Seller, including the right to rework and correct the Product.

**13.7** If the Seller repeatedly delivers Products that deviates from these Conditions, or fails to implement agreed measures to enhance the quality of the Products, the Purchaser is entitled to forthwith cancel the contract and/or order with the Seller.

**13.8** If the Seller refuses or neglects to fulfil its obligations under these Conditions, the Purchaser is entitled to procure replacement products from another supplier at the Seller's expense, as well as to cancel the contract and/or order with the Seller.



#### **14. Confidentiality**

**14.1** The Seller shall treat all information provided by or on behalf of the Purchaser or generated by the Seller for the Purchaser as confidential and not use the information for any other purpose than for the execution of the Purchaser's order. The information shall only be used by the Seller's employees who are directly involved in the execution of the order, and with whom similar non-disclosure agreements have been signed. The Purchaser is entitled to demand that electronically transferred information shall be encrypted.

**14.2** The Seller shall, at the Purchaser's request, return all drawings and designs, including copies that the Seller has received from the Purchaser. In such a case, any copy that the Seller has made shall be returned or destroyed without delay.

#### **15. Force Majeure**

**15.1** In case of labour disputes, civil commotion, governmental or official actions and other unforeseeable, inescapable and serious events beyond a party's control that prevent a party from performing any of its obligations under these Conditions, the parties shall be temporarily relieved from the obligation concerned during the period of time such event continue.

**15.2** The affected party has to provide sufficient proof for the existence of such event as stipulated in 15.1 to the other party in writing, with no unreasonable delays, notifying that such an event has arisen and stating the expected effect.

**15.3** Should such an event as stipulated in 15.1 continue for a consecutive period of more than one (1) month, the Purchaser shall have the right to terminate the agreement and/or the purchase order. In such a case, the Purchaser shall pay to Seller the price of Products delivered up to the date of termination.

#### **16. Transfer of contract**

**16.1** The Seller is not entitled to transfer his rights and obligations to another party without the Purchaser's written consent.

#### **17. Non-waiver**

**17.1** The failure by either party to enforce any provisions of these conditions or to exercise any right in respect thereto shall not be construed as constituting a waiver of its rights thereof.

#### **18. Arbitration, applicable law**

**18.1** Any dispute, controversy or claim arising out of or on in connection with these Conditions and any order on which these Conditions apply, or the breach, termination or



invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the location where the Purchaser is registered. Notwithstanding the foregoing, either party may bring an action in court in respect of an undisputed claim for payment.

**18.2** The arbitral tribunal shall be composed of three arbitrators, the seat of arbitration shall be the location where Purchaser is registered, unless otherwise agreed in writing. The language of the proceedings and of the award shall be English.

**18.3.** The United Nations Convention on International Sale of Goods (CISG) shall not apply to these Conditions.