

TERMS AND CONDITIONS OF PURCHASE

Definitions

- (i) “**Products**” means any and all products, equipment or other goods specified in the Purchase Order.
- (ii) “**Purchase Order**” means Solotech’s purchase order to which these Terms and Conditions of Purchase apply.
- (iii) “**Seller**” means the person, firm, partnership, company or other legal entity to whom the Purchase Order is issued and includes its employees, agents and subcontractors.
- (iv) “**Services**” means any and all services of whatever nature specified in the Purchase Order.
- (v) “**Solotech**” means Solotech Europe GmbH or its related companies as indicated in the Purchase Order.

1. General. These Terms and Conditions of Purchase, together with the Purchase Order and all Specifications (as defined below), constitute Solotech’s offer to Seller and the entire contract between Seller and Solotech (hereinafter, the “**Purchase Contract**”). Any additional or different terms proposed by Seller are non-binding, unless such terms are in a written form, identified as an amendment to this Purchase Contract and signed by Solotech and Seller.

2. Compensation & Payment. Seller shall issue to Solotech an invoice within 30 days following delivery of all Products or the performance of all Services. Such invoice shall be consistent with the prices set forth in the Purchase Order, and there shall be no additional charges, including shipping and handling charges, unless specifically agreed to by Solotech and Seller in writing and prior to the delivery of the Products or execution of the Services, as applicable. Unless otherwise provided, Seller shall be paid by Solotech within thirty (30) days from the date of issuance of the invoice.

3. Taxes. Any taxes that are billed to Solotech shall be stated separately on Seller’s invoices. Unless agreed upon between Solotech and Seller, Solotech shall not withhold any taxes from monies paid to Seller. Seller shall be solely responsible for the accurate reporting and payment of any taxes related to payments made hereunder.

4. Delivery. Seller shall deliver the Products or perform the Services no later than by the delivery date listed on the Purchase Order or otherwise agreed in writing between Seller and Solotech (the “**Delivery Date**”). If Seller is unable to, or reasonably anticipates that it will be unable to meet the Delivery Date, then Seller shall promptly notify Solotech with detail of the reasons for the failure, the steps Seller is taking to mitigate the failure and the earliest possible date for delivery. Unless Solotech expressly agrees in writing to a substitute delivery date, Seller’s failure to timely deliver Products or perform the Services by the Delivery Date shall constitute a material breach of this Purchase Contract.

5. Title & Risk of Loss. Risk of loss in the Products shall pass to Solotech upon receipt of the Products by Solotech at the delivery point specified on the Purchase Order. Title to the Products shall pass to Solotech upon payment of the purchase price. Solotech reserves the right to inspect and either accept or reject Products that do not conform to any term of the Purchase Order. In the event of delivery of Products that are visibly damaged or do not visibly conform to what is ordered under the Purchase Order, Solotech may reject such Products by giving written notice to Seller within a reasonable delay upon delivery.

6. Changes & Additional Work. Solotech may, at any time, by written order (a “**Change Order**”), request changes in the Products or the Services, authorize additional Products or Services, or change a Delivery Date. Solotech will not pay for any changes to any Products or Services that are not authorized in writing by Solotech. Within fifteen (5) business days after receiving a Change Order, Seller shall either accept the Change Order, or furnish to Solotech in writing: (i) a breakdown of the estimated cost and the proposed changes in the Seller’s prices attributable to the Change Order, as applicable, and (ii) a statement of any proposed changes in the Delivery Date attributable to the Change Order, as applicable. Seller’s failure to advise Solotech in writing within ten (10) business days after receipt of a Change Order of the effect of any requested changes shall constitute Seller’s consent to conform to the Change Order without any increase in Seller’s prices or without change in the Delivery Date or in any other term or condition of the Purchase Contract. If Seller advises Solotech in writing of any proposed changes in the prices or the Delivery Date attributable to the Change Order, an equitable adjustment in the prices or the Delivery Date will be negotiated. If a Change Order results in a decrease of Seller’s costs, then the prices shall be decreased by the amount of the net decrease in Seller’s costs, plus a deduction for a reasonable amount of Seller’s profit and overhead. In the event of a disagreement concerning a Change Order, Seller shall proceed as required by the Change Order, subject to Seller’s right to make a claim as provided for in Section 21. No Change Order shall invalidate the Purchase Contract, and all Change Orders shall be subject to this Purchase Contract.

7. Warranty.

Seller warrants for a period of one (1) year after Solotech’s receipt of the Products or Services that the Products and Services: (i) shall strictly conform to the Specifications, if any, set forth in the Purchase Order; (ii) shall be free of defects in material, workmanship or design; (iii) shall be of merchantable quality; (iv) shall be new, unless otherwise specified; and (v) shall be free from all liens, charges, hypothecs or other registrations. Seller further represents and warrants that it has good marketable title in the Products. The warranties set forth herein shall be in addition to any other applicable warranties, express, implied, or statutory, and shall survive any inspection, delivery, acceptance or payment by Solotech. Notwithstanding any payment by Solotech or failure of Solotech to discover or reject defective material and workmanship, if any of the Products or Services fails to comply with any warranty or term or condition of the Purchase Contract, Seller shall promptly correct such defect, at Solotech’s option, by replacing or by reimbursing Solotech for the defective Products, or performing corrective Services, the whole at Seller’s expense following notice of such defect from Solotech. Notice of breach of these warranties shall be deemed sufficient if given within 120 days after discovery thereof by Solotech. If Seller fails to so act within five (5) business days of receiving such notice from Solotech, Solotech may, at its option, cancel the Purchase Contract by giving Seller written notice, procure the Products or Services elsewhere, and charge Seller with any increased costs or losses incurred, in addition to its other rights and remedies hereunder and at law.

8. Intellectual Property. Seller warrants that the Products or the Services do not infringe upon, misappropriate, or constitute an unauthorized use of any patent, trade secret, copyright, trademark or other intellectual property right, and Seller shall indemnify and hold harmless Solotech, its directors, officers, employees, shareholders and parent and affiliated companies (“**Solotech Indemnitees**”) from and against any and all demands, claims, proceedings, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever (including, without limitation, reasonable costs of attorneys’, consultants’ and experts’ fees) asserted against or incurred by any Solotech Indemnitee by reason of, resulting from, or arising in connection with any warranty given by Seller in this section. If the provision of Services includes the preparation and submission of deliverables, all intellectual property rights of the Seller in such deliverables shall be assigned and transferred to Solotech upon full payment of the purchase price.

9. Permits, Licenses, & Compliance with Law. Seller, at its sole cost and expense, shall procure all necessary permits and licenses for delivery of the Products or Services, and shall comply with any law, ordinance, code and regulation applicable thereto.

10. Packaging. The Products shall be properly packaged to avoid damage during loading, transportation and unloading. Solotech will not pay for packing, crating or carriage unless specifically set forth in this Purchase Contract. All Products shall be marked, packaged, stored and delivered by Seller in accordance with all applicable laws and regulations. Delivery and other shipping documents must include disclosure of any relevant hazard(s) and emergency response procedures. Such information may be provided on a safety data sheet furnished with the Products.

11. Indemnification. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Solotech Indemnitees from and against all Damages arising out of or in any way related to (i) any breach of this Purchase Contract or failure of the Products or the Services to conform to the warranties set forth in this Purchase Contract, to the Specifications or to any applicable law or regulation, (ii) any act or omission by Seller, its employees, agents or subcontractors, or (iii) a violation by Seller of any applicable law, ordinance or regulation. Seller’s indemnity and defense obligations shall apply to any claim against Solotech by any employee of Seller, and Seller shall not assert as a defense in any action by Solotech to enforce Seller’s obligations under this section any immunity or other defense provided under any worker’s compensation or other laws. This indemnification shall be in addition to the warranty obligations of Seller.

12. Limitation of Liability. In no event shall either party be liable to the other for any indirect, incidental or consequential damages (including, without limitation, lost business profits, revenue or opportunities) sustained by the other party or any other individual or entity for any matter arising out of the Purchase Contract.

13. Specifications. All specifications, plans, drawings, process information, patterns or designs (collectively, the “**Specifications**”) drawn by Seller shall be submitted to Solotech for written approval prior to commencement of work or procurement of materials. Any Specifications supplied by Solotech to Seller in connection with the Purchase Contract shall remain the property of Solotech, and any information derived from the Specifications or otherwise communicated to Seller in connection with the Purchase Contract shall be kept confidential and shall not, without the written consent of Solotech, be published or disclosed to any third party, or be used by Seller except for the purpose of implementing the Purchase Contract. Any Specification supplied by Solotech to Seller must be returned to Solotech upon request by Solotech or termination of the Purchase Contract. Any invention or improvement made by Seller attributable in whole or in part to such Specifications shall be the property of Solotech.

14. Confidential Information. Each party may be exposed, or have access, to confidential and proprietary information belonging to or supplied by the other party, including, without limitation, Specifications, drawings, analysis, research, processes, computer programs, methods, ideas, know-how, business information (including sales and marketing research, materials, plans, accounting and financial information, personnel records, customer lists, and the like) and any other information relating to the business or affairs of Solotech (“**Confidential Information**”). Confidential Information does not include information which (a) has become publicly known through no violation of an obligation of non-disclosure of any person or entity, or (b) has been approved for disclosure in writing by the disclosing party. Except as otherwise specifically provided herein, each party agrees that it shall not use, transfer, commercialize or disclose the other party’s Confidential Information to any person or entity, except to its own employees to the extent that they have a need to know or have access to such Confidential Information in connection with the Products to be delivered or the Services to be rendered. Each party shall use at least the same degree of care in safeguarding the other party’s Confidential Information as it uses in safeguarding its own confidential information, but in no event shall less than reasonable due diligence and care be exercised. All of Solotech’s Confidential Information shall remain the property of Solotech and shall be returned to Solotech immediately upon its request or termination of the Purchase Contract. The provisions of this section shall survive termination of the Purchase Contract.

15. Force Majeure. Neither Solotech nor Seller shall be liable to the other for default or delay in performing its obligations under this Purchase Contract caused by any occurrence beyond its reasonable control, including natural phenomena such as earthquakes and floods, fires, riots, acts of terrorism, war, freight embargoes, or other cause (collectively, a “**Force Majeure**”). Force Majeure does not include events that were reasonably foreseeable or were caused by the party claiming the Force Majeure. If a party is delayed or prevented from performing due to Force Majeure, the party must inform the other party in writing as soon as practicable, but in all cases within five (5) days of the start of the Force Majeure. The notice must detail the nature of the Force Majeure and how long the party expects it to last. If the Force Majeure lasts, or is reasonably expected to last, more than thirty (30) days, then non-declaring party may immediately terminate the Purchase Contract by notice in writing. Otherwise, both parties’ rights and obligations shall be suspended for the period of the Force Majeure and a new schedule shall be agreed upon, in writing, between the parties.

16. Termination. Solotech may terminate the Purchase Contract upon five (5) days prior written notice to Seller without cause or liability, except for liabilities due for Products or Services received by Solotech prior to the effective date of termination. Such compensation shall in no event exceed the aggregate price payable by Solotech under this Purchase Contract and shall constitute Solotech’s sole liability for termination without cause. Either party may terminate this Purchase Contract (a) in the event that the other party materially breaches this Purchase Contract and such breach remains uncured for thirty (30) days following written notice by the non-breaching party, or (b) immediately if the other party is or becomes insolvent, files for bankruptcy or similar protection from courts of law, or makes an assignment for the benefit of creditors. Termination of this Purchase Contract shall not relieve or release either party from any rights, liabilities, or obligations that such party has accrued prior to the date of such termination.

17. Remedies. No remedy provided herein shall be deemed exclusive of any other remedy available at law. All claims for monies due or to become due to Solotech shall be subject to deduction by Solotech for setoff or counterclaims arising out of this Purchase Contract.

18. Assignment. Seller shall not delegate any duties nor assign any rights or claims under this Purchase Contract without the express prior written consent of Solotech, which consent Solotech may withhold in its sole discretion. Any assignment or delegation made without Solotech’s consent shall be null and void. Seller shall be fully responsible for all work performed by its subcontractors, and of persons either directly or indirectly employed by any subcontractor, as Seller is for the acts and omissions of itself and of persons directly employed by Seller. Solotech may assign or delegate any of its rights or obligations under this Purchase Contract to any affiliate of Solotech upon written notice to Seller.

19. Books & Records. If requested by Solotech, Seller agrees to make available to Solotech such books, record, receipts, vouchers or other data as may be deemed necessary by Solotech to enable it to appreciate cost figures for Products delivered under this Purchase Contract. Seller shall maintain, in accordance with generally accepted accounting principles and practices, such records as may be necessary to adequately reflect the accuracy of Seller’s charges and invoices for reimbursement under the Purchase Contract and such other additional records as Solotech may reasonably require in connection with this Purchase Contract. Such records shall be preserved by Seller for a minimum of two (2) years after the date of final payment without additional reimbursement or compensation therefor. When giving prior notice, Solotech shall have the right to inspect and verify the records kept by Seller in connection with the Purchase Contract at Seller’s regular place of business at all reasonable times.

20. Governing Law. This Purchase Contract and the acceptance of it shall, as provided herein, constitute a contract made in, and the validity and interpretation of the Purchase Contract shall be governed by, the laws of Germany.

21. Dispute Resolution. Any and all disputes and claims between Solotech and Seller related in any way to the Services, the Products or the Purchase Contract shall be resolved by agreement of the management representatives of Solotech and Seller. If any dispute or claim cannot be resolved by the management representatives of Solotech or Seller, only then such dispute or claim shall be submitted to the courts of the City of Frankfurt.

22. Waiver. Failure by either party hereto to enforce any provisions of this Purchase Contract or any rights hereunder shall in no way be considered a waiver of such provisions, rights, or in any way affect the party’s right to later enforce or exercise the same or other provisions or rights it may have under this Purchase Contract.

23. Notices. Any notice required or given pursuant to this Purchase Contract shall be in writing and shall be hand delivered and sent by email, with a copy by certified mail, or delivered by recognized delivery service at the following address: Purchasing Director, Solotech Inc., 5200 Hochelaga, Montreal, Quebec, H1V 1G3. Any notice to Seller shall be directed to the address of Seller shown on the Purchase Order.