

TERMS AND CONDITIONS OF PURCHASE

PREAMBLE

These Terms & Conditions for the purchase of goods (hereinafter “Terms & Conditions”) shall exclusively apply to each purchase contract (hereinafter the “Contract”) entered between Datalogic Mobile S.r.l., including any of its affiliates and/or its subsidiaries (hereinafter “Datalogic”) and the Supplier, unless expressly modified in writing by Datalogic and the Supplier (hereinafter collectively referred to as the “Parties”). Datalogic shall enter into Contracts exclusively on the basis of these Terms & Conditions, notwithstanding any other general or particular conditions of the Supplier. The offer, the purchase order (hereinafter the “Order”) and the Order acknowledgement issued for the conclusion of the Contracts covered herein shall be regulated by these Terms & Conditions. Any conditional or different terms proposed by the Supplier shall not be binding upon Datalogic, unless accepted in writing by Datalogic. Any reference to trade terms contained in these Terms & Conditions, or contained in any Order, Order form, Order acknowledgement, or contained in any other contractual document regulating the relationships between the Parties, shall be interpreted in accordance with Incoterms published by the International Chamber of Commerce (ICC), last published edition at the time of the conclusion of the relevant Contract. The place of performance of all the Contracts covered herein is Datalogic’s registered office at Lippo di Calderara di Reno, Bologna, Italy.

1. ORDERS AND SPECIFICATIONS

The Supplier shall deliver the products (hereinafter the “Products”) upon receipt of written Orders by Datalogic. For this purpose, Datalogic shall be free to use its own Order forms. The Supplier shall accept the Order in writing by means of a prompt Order acknowledgement.

The Contract is deemed to be concluded as soon as Datalogic receives the Order acknowledgement by the Supplier or, in any case, unless the Supplier rejects the Order in writing within five (5) days from its receipt. The Supplier shall indicate in all communications and invoices the progressive number of the Order. Datalogic shall not be liable for delays in payment or for other non-performances due to incomplete communications. Datalogic reserves the right to make changes to the Orders provided that the change is communicated in writing to the Supplier with the indication of the effective date of the change. The change is deemed to be accepted by the Supplier unless the Supplier rejects it in writing by fax within five (5) days from the receipt of the Order’s change. The quantity, quality, specifications and description of the Products shall be those set forth in Datalogic’s Order or in the Supplier’s Order acknowledgement.

The Products’ specifications, purchase literature, quotations, Orders, etc. shall be treated as strictly confidential and shall not be disclosed to any third parties. Datalogic shall have no liability in case of errors and mistakes of whatsoever kind contained in the Order acknowledgement issued by the Supplier.

2. PRICES OF THE PRODUCTS

The prices of the Products shall be those agreed upon between the Parties and set forth in the Order. Unless otherwise agreed upon in writing between the Parties, all prices are given on a DDP (Delivered duty paid) basis at Datalogic’s premises in Lippo di Calderara di Reno (BO). The prices do not include any duties, taxes and surcharges the Supplier may be obliged to pay.

3. TERMS OF PAYMENT

Unless otherwise agreed upon in writing between the Parties, Datalogic shall pay the purchase price, by interbank payment transaction, within sixty (60) days starting from the end of the month in which the invoice is received by Datalogic. Datalogic shall be entitled to suspend payments whenever the Supplier fails to perform its obligation or whenever the Supplier is likely, as a direct consequence of particular events, to be in material breach of its obligations. Should Datalogic fail to exactly perform its payment obligations at by the due dates, the Supplier shall not be entitled to suspend or delay the performance of its obligations.

4. DELIVERY

Subject to the provisions of Article 5 below, the delivery of the Products shall be made DDP (Delivered duty paid) at Datalogic's premises in Lippo di Calderara di Reno (BO), according to the instructions given by Datalogic. The delivery terms and conditions shall be those each time agreed upon in writing between the Parties.

Datalogic shall be entitled to return to the Supplier all Products delivered before the agreed term, at Supplier's risks and costs, or to charge the Supplier the costs of storage. In case of delivery delays, except for those due to a force majeure event, Datalogic shall at its discretion be entitled to:

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- a) ask the Supplier to exactly perform its delivery obligation, in whole or in part, within three (3) days and the Supplier shall pay to Datalogic an amount covering the damages suffered by Datalogic that, in the reasonable pre-estimation of the Parties and unless otherwise agreed upon in writing between the Parties, shall be equal to two percent (2%) of the purchase price of the Products in delay per each day of delay; and/or
- b) acquire elsewhere and whenever it deems appropriate the Products in delay at the Supplier's risks and costs, by means of delivery of a written notice to this effect to the Supplier; and/or
- c) terminate the Contract, being the termination immediately effective, by means of delivery of a written notice to this effect to the Supplier without entitlement of the Supplier to any compensation of any nature for the termination of the Contract.

Notwithstanding the foregoing, Datalogic shall in any event be entitled to claim the entire amount of the suffered damages.

Should the failure or delay in performing delivery be due to a force majeure event, delivery terms shall be extended and new delivery terms shall be agreed upon between the Parties in good faith, provided that the Supplier has promptly notified Datalogic in writing, by means of an e-mail and by fax, the occurrence of such force majeure event and has adopted all appropriate measures in order to limit its consequences. The force majeure event cannot be pleaded after the expiration of the agreed delivery terms. Should the force majeure event cause a delay in delivery longer than twenty (20) days, or an even shorter delay but incompatible with Datalogic's productive requirements all the same, Datalogic shall have the right to terminate the Contract, in whole or in part, whenever it deems appropriate by means of a written notice to this effect to the Supplier, without entitlement of the Supplier to any compensation of any nature for the termination of the Contract.

5. TRANSFER OF RISKS

The property in the Products shall pass to Datalogic DDP at Datalogic's premises in Lippo di Calderara di Reno (BO). All risks of damage or loss of the Products shall pass to Datalogic DDP at Datalogic's premises in Lippo di Calderara di Reno (BO).

6. SPARE PARTS AND OBSOLESCENCE

For a period of five (5) years from the delivery of the Products, the Supplier shall supply Datalogic with the spare parts of each Product. To this end, the Supplier shall hold an adequate amount of spare parts in stock. The shipment of spare parts shall be made by the Supplier DDP (Delivered duty paid) at Datalogic's premises in Lippo di Calderara di Reno (BO), or elsewhere according to the instructions given by Datalogic. Should the Products be commercial electronic products supplied by the Supplier, and whenever can be declared that a Product is obsolete, the Supplier shall notify Datalogic of the next obsolescence of a Product as soon as this has been declared by the Supplier or by the manufacturer of the Product. The Supplier shall use highest diligence in the communication of the obsolescence in order to grant Datalogic the longest possible notice and the possibility to issue a last purchase order of that Product.

7. SUPPLIER'S WARRANTY AND NON CONFORMITY INSPECTION

The Supplier warrants that all Products shall (i) comply with the technical specifications required by Datalogic; (ii) be free from defects in design, material, workmanship and any other defect and/or fault and/or error; (iii) be properly functioning; (iv) comply with all applicable laws, governmental regulations and ordinances concerning technical specifications, prevention of injuries to persons, environment, safety, in force in Italy and in the European Union; (v) not infringe any intellectual property right of third parties.

The warranty period is twenty-four (24) months from delivery of the Product. If, during the warranty period, the Products shows a non-conformity or a defect of any kind, Datalogic must notify the fact to the Supplier in writing within sixty (60) days from the discovery of such defects or non-conformity, providing the Supplier with a report of non-conformity, to be signed by the Supplier and be returned to Datalogic within five (5) working days of the date of the receipt thereof. "Non-conformity" shall mean any discrepancy between the Products and the technical specifications provided by or agreed with Datalogic. The report of Nonconformity must include:

- the actions that the Supplier is willing to take in order to avoid the repeating of the Non-conformity and/or the defect;
- the date within which the Supplier shall take such actions.

In addition to the right of replacement and repair of the defective Products, Datalogic shall also be entitled to:

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- a) reject, in whole or in part, the batch of the defective Products;
- b) ask the Supplier to take, at its own risk and expense, all required actions in order to make the Products in accordance with the technical specifications and with the standard quality reference as well as to eliminate all defects;
- c) ask the Supplier to select, at its sole expense and at the location indicated by Datalogic, the non defective Products within the batch where the defects and/or the Non-conformity have been discovered;
- d) ask the Supplier a price reduction;
- e) accept the defective Products provided that the Supplier must in any case, at its sole expense, take the necessary corrective actions in order to make the subsequent batches compliant with the technical specifications and errors free;
- f) ask the Supplier to pay a sum equal to the twenty percent (20%) of the Order's value (i) whenever the Supplier has not returned the report of Non-conformity duly signed and filled in;
(ii) upon the occurrence of the same Non-conformity after the Supplier had that it had been corrected.

Datalogic shall in any case be entitled to obtain the entire amount of the damages suffered and to terminate the Contract.

Should a Product or a batch of Products be replaced or repaired, the warranty term for such Product or batch of Products shall start to run again from the delivery date of the replaced and/or repaired Product or batch of Products.

Transportation costs related to the shipment of the Products and/or batch of Products to be repaired or replaced by the Supplier shall be born by the Supplier. In order to allow prompt corrective actions, the Supplier agrees to immediately provide Datalogic with a written detailed description of the defects and/or Non-conformity it may have discovered prior to the delivery to Datalogic during its own testing procedure. Upon Datalogic's request, the Supplier shall provide Datalogic with the list, description and result of any quality inspection conducted, or to be conducted, by the Supplier on the Products prior to delivery.

Should a change in the Supplier's production process impact on the Products, the Supplier shall promptly inform Datalogic in writing of such change. In order to verify that all necessary quality inspection is performed by the Supplier, the Parties agrees that Datalogic shall have the right to inspect and test the materials and workmanship of the Products at all times, without giving any prior notice, at Supplier's premises. The Supplier shall admit Datalogic's personnel in charge of the inspection and shall furnish without additional charge all reasonable facilities and assistance for a safe and convenient inspection and test.

8. SUPPLIER'S LIABILITY

The Supplier shall hold Datalogic harmless from any damage, cost and expense (including attorney's fees) arising out of or in connection with the Products or their use by Datalogic or its clients, including those arising from:

- i) claims and legal proceedings related to defects in the design of the Products;
- ii) claims and legal actions related to the poor quality and/or a manufacturing defect of the Products;
- iii) claims consequent to Product recalls.

Especially, the Supplier shall be liable for all damages and expenses incurred by Datalogic in connection with an epidemic failure of the Products, including the costs to repair and/or modify or replace the Products.

9. PATENT INFRINGEMENT

The Supplier shall, at its own cost, defend and hold Datalogic harmless from any infringement claim made against Datalogic by third parties asserting the infringement of intellectual property rights by the Products. The Supplier shall pay all costs, fees and damages related to such claims,

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provided that Datalogic gives the Supplier a prompt notice of the infringement claim. In addition to the foregoing, in case of any such legal action brought by any third party, or in case such an action is likely (in Datalogic's opinion) to be brought, the Supplier shall, at its option: (1) obtain, at its own cost, and grant to Datalogic a license to use the Products; (2) modify the Products so that they become non-infringing; (3) replace the Products with noninfringing and functionally equivalent ones; (4) grant Datalogic a credit equal to the purchase's value of the Products at the time of the notice of action or of its probable occurrence.

The Supplier shall make available free of charge to Datalogic any technical improvement in the Products designed and developed by the Supplier by promptly forwarding to Datalogic any and all the modification, improvement and upgrading made to the technical documentation originally transferred. In the event the research, modification, improvement or upgrading is made by the Supplier by carrying out a specific task of Datalogic, the copyright and the intellectual property rights on such improvement, designs and all connected technical results are and shall remain exclusive property of Datalogic. The Supplier shall not use the name and/or any trademarks of Datalogic, nor any sample made for Datalogic for its promotional activity without prior Datalogic written authorization.

10. TERMINATION

In case one Party is in material breach of its obligations under these Terms & Conditions, the other shall have the right to terminate the Contract if the material breach is not cured within fifteen (15) days after a written request to do so. Furthermore, either Party shall have the right to immediately terminate the Contract by means of a written notice in case the other Party goes bankrupt or enters into liquidation or in case of an insolvency procedure regarding its entire assets and liabilities or part of them.

Notwithstanding the foregoing, should the Supplier materially breach any obligation provided for in Articles 4, 6, 7, 9 or 12 of these Terms & Conditions, Datalogic shall have the right to immediately terminate the Contract by giving to the Supplier written notice of termination, without prejudice to its right to claim the entire amount of the damage due to the early termination. Datalogic shall furthermore have the right to early terminate the Contract in case of any kind of sale, assignment, lease, transfer or change in the property or control of the Supplier's business.

11. RIGHTS AND OBLIGATIONS AFTER TERMINATION

In the event of early termination of the Contract: (a) Datalogic shall have the right to cancel all placed Orders which have been confirmed but not yet executed, (b) the Parties shall perform all payments or deliveries due at the time of termination and shall comply with all warranty terms until the warranty has expired. The provisions of Articles 6, 7, 8, 9, 11 and 12 of the Terms & Conditions shall survive the termination.

12. CONFIDENTIALITY

The Supplier shall refrain from reproducing all or parts of the samples and/or Products of Datalogic that it has produced for Datalogic or it has only witnessed in preliminary stages of the development and from transmitting any connected information to third parties. The Supplier shall not disclose any confidential information obtained from Datalogic or regarding Datalogic or Datalogic's Products or Datalogic's business. Should the Supplier disclose any such information, Datalogic shall be entitled to immediately terminate the Contract and to obtain a sum equal to the purchase value placed by Datalogic with the Supplier during the last twelve (12) months. All drawings, designs, patterns, documents, elements, models, software samples, technical information, advertising materials and similar given to the Supplier are and remain property of Datalogic and must be returned upon request. The Supplier shall not to copy, reproduce, disclose to third parties any part of such materials and information and shall make its best efforts to keep them strictly confidential.

Failure to comply with the foregoing provisions shall entitle Datalogic to immediately terminate the Contract and claim damages.

13. CHOICE OF LAW; JURISDICTION

The Contracts covered by these Terms & Conditions shall be governed by and construed in accordance with Italian law. Unless the Parties expressly agree in writing upon an arbitration clause, the Parties agree to submit all disputes arising out of or in connection with the validity, interpretation and performance of the Contracts to the exclusive jurisdiction of the Court of Bologna.

14. INFORMATION AND CONSENT TO THE PROCESSING OF PERSONAL DATA

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According to Article 13 of the Italian statute n. 196/2003 on the processing of personal data (hereinafter the "Code"), the Supplier hereby declares to have been orally and exhaustively informed about: (1) the purposes and the terms and conditions of the processing, (2) the mandatory or non mandatory nature of the consent as well as the consequences in case of refusal to answer, (3) the categories of recipients to whom the personal data may be disclosed and the range of possible disclosure of the data, specifying that they shall not be disclosed further, (4) the processing's ownership and the data of the subjects responsible for the processing, (5) the rights provided for by article 7 of the Code including the rights of data access, updating, objects to data processing and cancellation.

The Supplier hereby gives his consent to the processing and diffusion of his personal data for the following purposes: (1) processing necessary for compliance with legal obligations and duties, (2) processing necessary and/or useful for compliance with the obligations of the Contracts covered by the Terms & Conditions, (3) processing necessary for marketing, statistical analysis, business brochure, internal control, commercial information, solvency's control, recovery of debt and mailing. The Supplier hereby gives his consent to the disclosure of his personal data to those recipients to whom the disclosure is necessary and/or useful for the compliance with the obligations of the Contracts covered by the Terms & Conditions. The consent mentioned above also includes the disclosure of the personal data to those advisors and/or corporations acting on behalf of the Parties in the processing of accounting and administrative data.

The Supplier hereby gives his consent to transfer abroad his personal data to those recipients to whom the disclosure is necessary and/or useful for the compliance with the obligations of the Contracts covered by these Terms & Conditions and for accounting and/or fiscal purposes.

15. MISCELLANEOUS CLAUSES

These Terms & Conditions supersede and invalidate all other commitments and warranties relating to the subject matter hereof which may have been made by the Parties either orally or in writing prior to the date hereof, and which shall become null and void. The Contracts subject to the present Terms & Conditions shall not be transferred or assigned by the Supplier without Datalogic's written consent. Each Party shall be responsible for all its legal, accountancy and/or other costs and expenses incurred in the performance of its obligations. The possible partial invalidity of any one of the provisions contained in the present Terms & Conditions, or the possible partial invalidity of any provision contained in any other contractual document intended to regulate the relationships between the Parties, shall not undermine the validity of any of the other conditions contained herein.

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