

General Conditions of Purchase Orders

- 1. Scope**

The present General Conditions shall be applicable to any purchase order/contract (“Order”) placed by ESO, unless otherwise specified in the Order. Any provision contrary to or deviating from the Order or these General Conditions, whether included in the supplier's general conditions or explicitly formulated in its offer, are rejected unless specifically accepted by ESO in writing. ESO reserves the right to cancel the Order should the supplier make any alteration to the acknowledgement. Any action taken by the supplier to execute the Order shall be deemed to constitute acceptance of the Order and of the present General Conditions.
- 2. Execution of Orders**

The supplier shall be solely responsible for the performance of the Order (“the Work”) in every respect. The Work shall be performed with professional skill, care and utmost diligence and at least in accordance with the relevant trade, industrial and technical practice and the state of the art.
- 3. Assignments – Sub-Orders**

The supplier shall request prior authorization from ESO, in writing, for the assignment or sub-letting of the Order or part thereof.
- 4. Deliveries – Time Limits**

The supplies specified in the Order shall be delivered in compliance with the provisions of the Order, on the date, at the place and in the manner set out therein. No delivery shall be made in advance of the specified date without the consent of ESO. No delivery shall be considered effective until the bill of lading or equivalent document is in the possession of ESO. To the extent that a failure to perform an obligation is due to Force Majeure, it shall not be in default nor be liable for damages nor owe any penalty for the recognized period of the Force Majeure event, provided that it has given ESO written notice of the failure and the reason therefore without delay and in any case within the period agreed for the performance of the obligation. The applicable definition of Force Majeure is the following: an exceptional event or circumstance which is at the same time compelling, unpredictable, unavoidable and outside the control of the parties. Not considered Force Majeure are: (i) insolvency or bankruptcy of a sub-contractor or a Consortium member; (ii) labour disputes, strikes or lockouts; (iii) non-performance or non-fulfilment of an obligation by sub-contractors.
- 5. Items Made Available by ESO**

Any Equipment, material, computer software, database, technical document, imagery or information made available to the supplier by ESO for the performance of the Order shall remain the property of ESO and shall be returned to ESO, including any copies thereof, upon completion of their use, and at the latest immediately after execution of the Order or the date of its termination.

The supplier shall be responsible for the safe keeping, maintenance, storage, transport and, as appropriate, insurance of all such items and shall use them exclusively for the performance of its obligations under the Order. These items are made available by ESO in their existing conditions and without any express or implied warranty. The supplier shall check any items and notify ESO within two weeks after receipt of any such item about any defects or unfitness, failing which the item shall be deemed to have been made available to the supplier without any defects and fit for the purpose for which it was made available to the supplier.

The supplier shall take all necessary measures to make known and protect the ownership of ESO of such items, including clearly marking them as ESO property.

If such items have been purchased by the supplier for and on behalf of ESO, it shall take all necessary measures and, in particular, retain all documents required to prove ESO's ownership.
- 6. Confidentiality**

Each party agrees and confirms to use any Confidential Information (which shall mean “any and all information of a commercial, technical or financial nature which is not generally available to the public and which is disclosed by one party to the other for the performance of the Order and which can be reasonably deemed to be confidential, including all the above classified as “ESO Internal”), whether written or verbal, passed on to it by the other party solely for the purpose for which they were released to it and to make no other use thereof; each party moreover agrees and confirms to treat them in the strictest confidence and to take all reasonable security precautions in the safekeeping of the Confidential Information, applying no lesser security measures to it than to its own Confidential Information.

Each party recognizes that the receipt of these documents and/or information from the other party does not constitute a prior use by it in terms of patent law(s), and it, therefore, shall not make their receipt a reason for claiming a prior use right to any patent applications which may be filed later by the disclosing party.

The above disclosure and use limitations shall not extend to Confidential Information that is or has become public knowledge, or has already been lawfully in the possession of the receiving party before the Confidential Information was passed on to it by the disclosing party or as far as such Confidential Information is lawfully acquired by it from third parties.

The above obligations shall remain in full force and effect after termination of the Order, unless otherwise notified in writing by the disclosing party.

- 7. Inspection** ESO reserves the right to carry out inspections during the execution of the Order, in the factory and the workshops or on the work sites of the supplier and/or of its sub-contractors; the goods so inspected shall on no account be deemed to have thereby been accepted.
- 8. Dispatch – Routing of Goods – Customs Clearance** The supplier shall strictly follow the instructions attached to the Order for the dispatch, routing and customs clearance of the goods, and shall remain solely responsible for the consequences if these instructions are not followed.
Trade terms used by ESO shall be interpreted according to the International Chamber of Commerce Rules - "**INCOTERMS**" (if not specified in the Order, the latest officially released version shall apply) with the following exception:
The term DELIVERED, as used by ESO for international trade, shall be construed as being EXONERATED FROM IMPORT DUTIES.
- 9. Acceptance of the Supplies** Unless otherwise specified in the Order or in the applicable INCOTERMS rule, acceptance of the supplies shall always take place at the ESO site, after due checking. Ownership in the supplies shall pass to ESO upon acceptance.
- 10. Return of Goods** ESO will refuse to accept any goods found not to be in accordance with the conditions of the Order. Such goods shall be taken back by the supplier within 15 days of the date of ESO's rejection note, or returned by ESO to the supplier's address, at the supplier's expenses.
- 11. Guarantee** The guarantee period for all supplies shall be two years from the date of their acceptance, in respect of any defect and/or fault in workmanship. The supplier shall meet all costs involved in the repair or replacement of supplies under guarantee.
- 12. Prices** Unless otherwise agreed in the Order, prices shall at all times be deemed to be firm and fixed (i.e. not subject to revision). Supplies for the use of ESO are exempt from customs duty. With regard to taxes and levies, there are special arrangements for ESO and the supplier is required to become conversant with such arrangements. Accordingly, prices shall be quoted net and free of tax. Where VAT (Value Added Tax) is applicable, this tax shall be shown clearly on the invoice. Save in respect of possible exemption from VAT arising from the special fiscal conditions which apply to ESO, the supplier shall in no way be released from its obligation to pay any taxes which may normally be due.
- 13. Invoices** Invoices shall be sent per E-mail to: invoice-control@eso.org
- 14. Payments** Invoices shall be settled only to the value of the goods accepted, and on condition that the bills of lading and/or other necessary documents have been received by ESO. Provided that the invoiced goods have been accepted by ESO after checking, ESO will settle the invoices by postal or bank transfer within 30 days (unless otherwise agreed in the Order) from the date of acceptance of the supplies at the ESO site, or of receipt of the invoice, whichever is later.
- 15. Safety** In addition to observing all relevant national legislation in safety and health matters, the supplier shall, when on the ESO site, comply with the safety regulations in force thereon, with which it is required to become conversant. It shall take all necessary measures to this effect.
- 16. Intellectual Property and Patent Rights** - Newly developed data, information, knowledge:
ESO will be the owner of all new data, information and knowledge developed under or in consequence of the Order. Any such new data, information and knowledge, shall be supplied to ESO without any restriction. In case the supplier wishes to use or exploit the newly developed data,

information or knowledge, it shall request a license from ESO with that effect. Licensing conditions shall be defined by ESO.

- Protected intellectual property:

The supplier shall provide ESO with all necessary data, information and knowledge required for ESO to exercise its rights to file any application for any intellectual property title regarding the newly developed data, information or knowledge. The supplier shall provide all reasonable support, as required from an Inventor, to ESO for these applications, and will not withhold any consent required.

Should ESO not be interested in filing an application for any intellectual property title regarding the newly developed data, information or knowledge, on the request of the supplier ESO might consider transferring the necessary rights to the supplier. The conditions of the transfer of rights shall be defined by ESO.

- Third party rights:

The supplier shall deliver all supplies to ESO free from any restrictions arising from third party rights that could limit any of ESO's rights, except if expressly accepted by ESO in writing. The Order price shall be deemed to include all fees and royalties for the use of third party rights. The supplier shall indemnify ESO for any loss or damage, including legal costs, and hold ESO harmless from and against any claims of third parties arising from any infringement or alleged infringement of third party rights.

- Publication:

No publication in any format of the newly developed data, information and knowledge shall be done without the prior consent of ESO in writing.

17. Publicity

The supplier may not, for publicity purposes, use the name, emblem or images of ESO or any of the names under which ESO or its observatories are known, or indicate that it is an ESO supplier, unless it has first obtained ESO's permission in writing. Any permission may be withdrawn by ESO at any time without any compensation due and shall expire automatically on the date of expiry of the guarantee period.

Press releases, advertising, broadcasting, programs, exhibitions, news bulletins or any other publications by the supplier related or referring to the Order shall be drawn up in consultation with ESO.

18. Penalties for Delays

The Order might stipulate that if the supplier fails to observe the time limits for executing the Order, it shall be liable to penalties, subject to the provisions of Article 4. Prior warning by ESO shall not be necessary. The amounts of the penalties shall be set out in the Order.

19. Cancellation

ESO reserves the right to cancel or terminate the Order without any compensation whatsoever, if the supplier fails to complete all or part of the Order or if it becomes apparent that the supplier shall not be capable of performing substantial part of its obligations, after receiving a formal letter of notice, or in the event of gross negligence or misconduct on the part of the supplier.

20. Bankruptcy

In the event of bankruptcy or of proceedings being opened which may lead to bankruptcy, ESO reserves the right to cancel or terminate the Order without compensation, by serving notice of cancellation.

- 21. Termination** ESO reserves the right to modify or terminate any Order it may place with payment of full compensation to the supplier of reasonable costs, expenditures and liabilities, the amount of which shall not exceed the value of the Order. No compensation shall be paid for loss of profit.
- 22. Liability** Each party shall hold the other party harmless from, and indemnify it for loss and damage, including, but not limited to, personal injury and death and related legal costs, resulting from acts or omission of the party, its employees, agents and/or Sub-contractors.
Notwithstanding the above, a party shall not be liable to the other for loss of contract, loss of income or profit or any other consequential or indirect loss or damage, except in cases of gross negligence or willful misconduct.
- 23. Disputes – Arbitration** Failing an amicable settlement, any dispute between the parties arising out of or relating to the Order shall be finally settled by international arbitration in accordance with the arbitration clause applicable to ESO, a copy of which, if not attached to the Order, may be obtained on request.
- 24. Applicable Law** The provisions of the Contract shall be interpreted and applied in accordance with their true meaning and effect, taking into account the internationally accepted general principles of law. For matters of substance not covered by the Contract, subsidiary reference shall be made to German substantive law. Such subsidiary reference to German law shall be made exclusively for the matter or the Contract provision concerned and shall in no event apply to other provisions of the Contract.

Munich, July 2024