

General Purchasing Conditions

1 Scope

1.1 The following General Purchasing Conditions of ES-DE Radio Communication Systems GmbH & Co. KG (hereinafter referred to as "ES-DE") apply to the production of works and to the purchase of goods by ES-DE from the Supplier (together "deliveries") as well as to the performance of services ("services").

1.2 Any general terms and conditions of the Supplier deviating from or supplementing these General Purchasing Conditions are non-binding for ES-DE, even if ES-DE does not object to them explicitly, or if the Supplier states that he wishes to deliver only according to his general terms and conditions, or if these are included in his declaration of acceptance pursuant to Section 2.1, or the delivery note or, as the case may be, the purchase order. Acceptance or payment of deliveries and services does not constitute agreement either.

2 Conclusion of Contract

2.1 The Supplier may accept orders and commissions (together "orders") from ES-DE only by written declaration within a period of two weeks. The receipt of the acceptance by ES-DE shall be decisive for the observation of the deadline.

2.2 The acceptance of orders shall contain all material order data, particularly the exact description of the ordered deliveries and services, the commission number and the order and delivery date. The Supplier shall be responsible for any delays, which result from a breach of these provisions by the Supplier.

2.3 Amendments or changes of orders require the written confirmation of ES-DE.

2.4 The Supplier is not authorized to subcontract third parties without the prior written consent of ES-DE. The unauthorized subcontracting of third parties entitles ES-DE to rescind the contract in whole or in part and to claim damages.

3 Prices

3.1 The agreed prices are fixed prices and exclude subsequent claims or price increases of any kind.

3.2 Deliveries are made DAP, INCOTERMS 2010, unless agreed otherwise.

4 Payment Terms

4.1 Invoices of the Supplier shall be submitted in duplicate and shall contain all information required in the order for each delivery.

4.2 ES-DE will effect payments – unless agreed otherwise – by wire transfer within 30 days after delivery or acceptance, as the case may be, and receipt of invoice. In the event that the parties agree on a cash discount in the order, a deduction of that discount is permitted also in the case of a set-off or in the case of a justified exercise of retention rights because of defects. Payment is subject to invoice verification.

4.3 The Supplier is not entitled to assign his claims against ES-DE or to have it collected by third parties without ES-DE's prior written consent, which may not be withheld unreasonably. This shall not apply in the case of an extended retention of ownership as well as in respect to assignments to companies, in which ES-DE holds a direct or indirect participation of more than 50%. Section 354a of the German Commercial Code (HGB) shall remain unaffected.

5 Delivery Date, Place of Fulfillment

5.1 Agreed delivery and performance dates and deadlines are binding. Advance deliveries and performances as well as deliveries and performances after the agreed delivery date are permitted only with the consent of ES-DE.

5.2 Relevant for the timeliness of deliveries and performances is the receipt at the receiving place specified by ES-DE. The Supplier shall notify ES-DE without undue delay, if and as soon as it becomes apparent that he will be unable to meet the delivery or, as the case may be, the performance date. The acceptance of a late delivery or service by ES-DE does not contain any waiver of compensation claims.

5.3 If – in the event of delay – the Supplier cannot prove that he is not responsible for the delay, ES-DE may charge a penalty in respect of each commenced working day of delay amounting to 0.2 % but not exceeding a total of 5% of the total value of the contract. In the event that the appropriate reservation of rights is not made at the time of acceptance of delivery, services or rectification, this penalty may be claimed up until the date of final payment. ES-DE shall be entitled to charge the penalty in addition to performance. Further rights and claims shall be reserved.

5.4 ES-DE is not obliged to accept partial deliveries. In the case of agreed partial deliveries, the remaining quantity still to be delivered shall be stated in the delivery note.

5.5 Place of fulfillment for the Supplier's deliveries or services is the receiving place specified in the order. If no receiving place is specified and it cannot be derived from the nature of the obligatory relationship the company seat of ES-DE shall be deemed place of fulfillment.

6 Shipment, Transfer of Risk, Export Control, Offset Provisions

6.1 The Supplier shall package, ship, and insure the deliveries properly and comply with all relevant packaging and shipment provisions. The Supplier shall be liable for all damages, which ES-DE suffers because of the improper or insufficient packaging, shipping, or insurance.

6.2 Shipping documents such as e.g. delivery notes and packing slips shall be included with the deliveries. All documents shall state the order numbers and the identification required by ES-DE for the order. No later than on the day of shipping, a shipping notice shall be sent to ES-DE in advance by fax or e-mail.

6.3 Additional costs, which ES-DE incurs as a consequence of non-compliance with the above rules, shall be borne by the Supplier.

6.4 In the case of deliveries without installation or assembly, the risk passes when the goods are received at the receiving place specified by ES-DE. In the case of deliveries with installation or assembly, risk passes upon acceptance to be carried out at the place of assembly.

6.5 The implied acceptance set forth in Section 640 paragraph 1 sentence 3 of the German Civil Code (BGB) is excluded. The acceptance by way of a certificate of completion pursuant to Section 641a BGB is excluded.

6.6 The Supplier shall observe all relevant export restrictions.

7 Rights of ES-DE in the Case of Defects under a Purchase Agreement or a Contract to produce a Work

7.1 The Supplier shall be responsible for defects of the deliveries under a purchase agreement or a contract to produce a work for a period of three years from the transfer of risk. In deviation from sentence 1, the limitation period for buildings and for works, whose results consist in the rendering of planning or monitoring services for this purpose, amounts to five years from acceptance.

7.2 ES-DE will notify the Supplier in writing without undue delay about any defects as soon as these are determined during the ordinary course of business. Insofar, the Supplier waives the objection of late complaint of defects.

7.3 ES-DE shall be entitled to the statutory claims for defects without restrictions. ES-DE shall have the right, at its option, to demand from the Supplier to rectify the defect or deliver an item free of defect or, as the case may be, the production of a new work. The right to claim damages, particularly the right to claim damage instead of performance, shall remain explicitly reserved.

7.4 In addition to the statutory claims, ES-DE may in the case of a defect, after the fruitless expiration of a reasonable period set by ES-DE for subsequent performance, rectify the defect itself and demand reimbursement of the necessary expenses, unless the Supplier has a provision pertaining to self remediation of defects for contracts to produce a work (Section 637 BGB) shall apply to purchase agreements accordingly. ES-DE may demand advance payment from the Supplier for the expenses required to rectify the defect.

8 Rights of ES-DE in the Case of Breaches of Service Contract

Notwithstanding Section 7, the statutory rights of ES-DE shall apply in the case of breaches of service contracts.

9 Quality and Safety, Access Right

9.1 The Supplier shall comply with the recognized rules of technology, the safety regulations and the agreed technical data and standards and shall ensure that the deliveries and services meet all statutory requirements, particularly the environmental protection, accident prevention, and other work protection provisions and the rules of safety technology. He shall furthermore advise ES-DE about any special, not generally known handling and disposal requirements and shall provide for each delivered good a manufacturer's certificate or certificate of conformity (CE) within the meaning of the applicable Directives of the European Union or other statutory provisions. Changes of the deliveries and services require the prior written consent of ES-DE. The manner and nature of the cooperation on the quality sector, such as e.g. first sampling and documentation, is set forth in the respective product specification.

9.2 Employees authorized by ES-DE and the representatives of public authorities or their delegates have access to all business premises at all times during regular business hours in which work is carried out for ES-DE, irrespective of whether these are business premises of the order-related documents for auditing purposes or to verify legal requirements. These access rights during visits must particularly be granted to all persons authorized by ES-DE, who are responsible for monitoring progress of the work commissioned by ES-DE from the Supplier and for related audits, examinations, or for the qualification of the Supplier.

9.3 The representatives of customer of ES-DE shall have access to all business premises at all times during regular business hours, where work is carried out for ES-DE, if ES-DE has consented.

10 Provision of Materials

10.1 All documents and objects of any kind provided to the Supplier by ES-DE remain the property of ES-DE. They may be used exclusively for providing the ordered deliveries or services. The Supplier shall insure all objects provided to him against loss and deterioration. The Supplier does not have any retention right with respect to the objects of ES-DE.

10.2 To the extent that objects provided by ES-DE are processed or transformed by the Supplier into a new movable object, ES-DE is deemed to be the manufacturer. In the case of a connection or inseparable mixing with other objects, ES-DE acquires joint ownership in the new object in proportion of the value, which the objects had at the time of connection or mixing. If the connection or mixing occurs in a manner, where the objects of the Supplier have to be considered the main object, it shall be agreed that the Supplier transfers proportional joint ownership to ES-DE, while the Supplier stores the joint ownership for ES-DE free of charge.

10.3 The Supplier shall carry out any maintenance and inspection work that may be necessary at his own expense and shall insure the provided objects sufficiently and prove this to ES-DE upon request.

11 Confidentiality

11.1 The order of ES-DE shall be treated confidentially. The Supplier furthermore shall keep all commercial and technical information and documents, which become known to him through the business relationship and which are not generally known, secret and use these exclusively for providing the ordered deliveries. Drawings, models, samples, and similar objects shall not be submitted or made available to unauthorized third parties. Duplicating such objects is permitted only within the limits of copyright provisions and to the extent required in order to fulfill the obligations incumbent upon the Supplier. Any subcontractors shall be bound to confidentiality accordingly.

11.2 The Supplier is only entitled to mention, depict, or use the company name or trademarks of ES-DE in any other way for purposes of advertising materials, when naming references, or for other publications, if ES-DE has consented to this in writing in advance.

11.3 ES-DE may demand observance of further security regulations.

12 Spare Parts, Readiness to Deliver

12.1 The Supplier shall supply spare parts to ES-DE under reasonable conditions throughout the period of the usual technical lifetime, but in any case for a period of at least ten years after the last delivery.

12.2 If the Supplier discontinues the delivery of the goods after expiration of the period set forth in Section 12.1 or during that period, he shall provide ES-DE with the opportunity for a least order under reasonable conditions.

13 Intellectual Property Rights

13.1 If the deliveries or the services provided by the Supplier are subject to patent or copyright protection, ES-DE shall be granted all rights of reproduction, use, operation, release, adaptation, modification or translation of the deliveries or the service as far as this is necessary for the purpose of the purchase order. The grant of rights under this Section is included in the compensation according to Section 3.

13.2 ES-DE acquires full property of the deliveries or the services covered by the respective purchase order, in particular insofar as folders, plans, technical memos, drawings, models, prototypes or tooling are concerned.

13.3 The Supplier shall indemnify ES-DE against any liability, which is based on claims that the deliveries and services of the Supplier infringe any third-party patents, copyrights, business secrets, or other intellectual property rights, unless the Supplier proves that he is not at fault in this respect. In this case, the Supplier shall bear all costs and payment obligations arising from a decision of a court of last instance or a settlement, if ES-DE informs the Supplier within 10 (ten) days from the assertion of a claim, grants the Supplier the sole control over and decisions regarding the legal defense and leading settlement negotiations, and provides any reasonable support upon request of the Supplier. Section 7.1 shall apply accordingly.

14 Product Liability

The Supplier shall meticulously examine its deliveries for defects and undertakes to do everything feasible in order to avoid any product liability. If ES-DE is held responsible by a third party because of the defectiveness of a product and if the defectiveness is due entirely or in part to a defect of the Supplier's delivery, ES-DE may instead of compensation of all losses also demand indemnification vis-à-vis the third party. The Supplier's obligation to pay damages shall also include the costs of a precautionary recall measure in order to prevent damage, if this is appropriate.

15 Hazardous Materials, Employee Protection Provisions

15.1 ES-DE is certified in accordance with the international standard ISO 9001-2008. In connection with the fulfillment of orders for customers, ES-DE has therefore committed itself to observe the set of rules of this standard. The Supplier shall also be bound to such an observance

15.2 The Supplier shall employ only such employees for works at ES-DE, who have the qualification required for this work. The Supplier shall make corresponding proof available to ES-DE upon request with short notice for a sample examination.

15.3 The Supplier shall comply at his own expense with the applicable legal requirements, in particular safety and environmental regulations, including the regulation concerning hazardous materials and the German Electrical and Electronic Equipment Act.

15.4 The Supplier declares with acceptance of an order in case of delivery of chemical substances or mixtures thereof as defined by the regulation No. 1907/2006 of the European Parliament concerning the handling of chemical substances ("so called REACH regulation") that he, acting either as producer, importer or supplier is aware of the provisions of a.m. regulation and confirms to adhere to them. The supplier declares with the confirmation of an order in particular to be aware of and will adhere to the Articles 7 and 33 of the REACH regulation.

15.5 The Supplier shall be responsible for the reacceptance and disposal obligation according to Section 10 paragraph 2 German Electrical and Electronic Equipment Act and shall bear any related costs.

16 Termination of services

16.1 In the event, the Supplier shall be incapable or refusing to perform the services ordered or in the event of a failure to observe any of the conditions of a purchase order for services, ES-DE after serving formal notice by registered letter with request for acknowledgment of receipt, remaining unanswered within a period of thirty (30) days, may terminate the purchase order according to statutory law on the basis of the Supplier's fault for all or part of the services ordered. Any claims for damages shall remain unaffected by such termination.

16.2 The statutory provisions of the German Civil Code concerning the termination of services shall remain unaffected.

17 Insurance

17.1 The Supplier shall conclude and maintain with insurers of recognized reputation and security adequate insurance policies to cover its liabilities under the purchase orders issued by ES-DE. At a minimum, Supplier shall maintain a General Third Party Liability Insurance for an amount of no less than 5.000.000 (five million) EUR per occurrence and 10.000.000 (ten million) EUR in the yearly aggregate.

17.2 The Supplier shall provide certificates of such insurances on request of ES-DE at any time.

18 Final Provisions

18.1 The laws of the Federal Republic of Germany excluding the provisions of the UN Convention on the International Sale of Goods (CISG) shall apply to all legal relationships between ES-DE and the Supplier.

18.2 Should the Supplier cease to make payments, or if an interim insolvency administrator is appointed or if insolvency proceedings are commenced in relation to the assets of the Supplier, ES-DE may terminate the contract and/or any purchase orders issued there under. In the event of termination ES-DE may continue to utilize existing facilities, deliveries or services already performed by the Supplier in exchange for reasonable payment.

18.3 Place of venue for all disputes arising from the business relationship as governed by these General Purchasing Conditions shall be, at option of ES-DE, the place of fulfillment as per Section 5.5 or Ulm. ES-DE is furthermore entitled to file a claim against the Supplier at any other place of general or special jurisdiction.

18.4 Changes and amendments to these General Purchasing Conditions as well as side agreements require the written form. This shall also apply to any waiver of this written-form clause.

18.5 If any of the above provisions should be or become ineffective, the validity of the remaining provisions shall remain unaffected. The parties hereto are obliged to agree upon a provision to replace the ineffective provision that approximates as closely as possible the economic intent of the ineffective provision.