

**CONDITIONS OF PURCHASE**  
**Airbus Defence and Space SAS – Version 16.02.2018**

**1. Definitions:**

The titles of the articles (“Articles”) herein are inserted for convenience of reference only and shall not affect the interpretation of these Conditions.

Unless otherwise defined, capitalised terms, singular or plural, used in these Conditions shall have the meaning set out below:

“**Acknowledgement Form**” means the form of acknowledgement document issued with the Order.

“**Airbus**” or the “**Purchaser**” means Airbus Defence and Space SAS which places the Order and is identified on the front of the Order.

“**Conditions**” means the terms and conditions of purchase and supply set out herein.

“**Due Delivery Date**” means the due date of delivery of the Item to the place of delivery as specified in the Order.

“**End User**” means the entity designated in the End User Statement as being the end user of the Item.

“**End User Statement**” means the statement provided by Airbus identifying the programme on which the Item will be used and the End User.

“**Excusable Delay**” has the meaning set out in Article 9.1 (Excusable Delay).

“**Export Regulations**” means any national and international laws and regulations including, without limitation, laws and regulations applicable to import, re-export or otherwise transferred technical data or technology to which the Item or any part of the Item may be subject.

“**Item**” means any goods, toolings, material, work or service identified in the Order and as specified in the Specification forming part of the Order.

“**Final Customer**” means any company, individual, government or entity having lawful ownership or lawful usage of the Final Product or Item.

“**Official Services**” means the national supervisory entities.

“**Order**” means the Specific Conditions, these Conditions and any attachments, which are incorporated by reference, and any amendments to the foregoing documents.

“**Parties**” means the Purchaser and the Supplier and “**Party**” shall be construed accordingly.

“**Specification**” means the requirements defining the Item, if any, issued by the Purchaser and incorporated in the Order.

“**Specific Conditions**” means the conditions negotiated and agreed between the Purchaser and the Supplier incorporated into and appearing on the front of the Order including any Specifications.

“**Final product**” means the Purchaser’s products and all variants and derivatives thereof, in which the Items (as specified in the Order) are or could be incorporated.

“**Supplier**” means the company, person or entity upon whom the Order is placed and which is identified on the front of the Order.

The Supplier will be provided, upon request, with any document related to the Order and referred to herein.

**2. Purpose and Scope:** The Parties agree that these Conditions together with the Specific Conditions are the terms and conditions applicable to the Order.

**3. Order and Order Acceptance:**

**3.1** Within fourteen (14) calendar days of a submitted Order, the Supplier undertakes to notify the Purchaser of acceptance or refusal of the said Order by signing and returning to the Purchaser the attached Acknowledgment Form, by mail, fax or e-mail.

**3.2** The Order shall be deemed to be accepted without reservation by the Supplier after fourteen (14) calendar days, unless the Supplier notifies the Purchaser in writing of its refusal to accept the Order. If the Supplier starts work based on the Order without returning the Acknowledgment Form, the Supplier shall be deemed to have accepted the Order without reservation. If the Supplier expressly refuses the Order, it shall be deemed withdrawn and the Parties may negotiate new terms.

**4. Precedence:** In the event of any conflict between the following documents forming part of the Order, they shall be interpreted in accordance with the following order of precedence (i) the Specific Conditions; (ii) the Conditions; (iii) the Specification; and (iv) any other documents.

**5. Inspection:** The Purchaser, the Official Services and the Final Customer, as applicable, shall be entitled to inspect the Item at the Supplier’s facilities and the Supplier shall grant access to the Purchaser, the Official Services and the Final Customer to its facilities in which the work is being carried out and ensure access to those facilities of its suppliers and subcontractors, if any, at reasonable times. This right of access is more particularly granted to the representatives responsible for following-up the performance of the Item or for audits.

**6. Delivery and Acceptance:**

**6.1 Import free of Customs Duties.** If the Supplier is based within the EU, it shall confirm in writing to the Purchaser that material/components purchased from outside the EU have been imported free of duty and Value Added Tax under inward processing relief (or other customs regimes with the same effect) and that it is supplying the Item free of duty and indemnifies the Purchaser from and against any consequences of its non-compliance with this Article.

The Supplier shall take the responsibility for export customs clearance in the country of departure. The Purchaser shall take the responsibility of import customs clearance in the country of destination for delivery on the Purchaser sites.

The Supplier shall systematically indicate the country of origin of the Item (made in).

**6.2 Packaging.** Unless otherwise specified in the Order, the Item shall be packed in accordance with the latest Airbus requirements, as provided to the Supplier upon request, and in any case compliant with the applicable packaging regulations of the country of delivery. As a minimum, the packaging shall be convenient, safe, robust, eco-efficient and cost-optimised, so as to ensure the transport and storage of the

delivered Item in an undamaged and serviceable state. The Item shall be delivered with all applicable documentation and with a delivery note in duplicate bearing the Order, Item and item reference numbers, the place of delivery and the delivered quantities. Such applicable documentation shall be attached inside and outside the packaging.

### **6.3 Delivery of the Item – Title and Risk**

**6.3.1** Delivery shall be made in accordance with the requirements set out in the Order, in particular with the requirements of the Specific Conditions and the Specification, and time shall be of the essence in relation to the delivery dates set out in the Order..

**6.3.2** Title to and risk in the Item shall transfer to the Purchaser upon delivery to the delivery address specified on the Order. In the case of a notification of rejection of the Item being given to the Supplier by the Purchaser due to the non-compliance by the Supplier with the terms of the Order, title and risk to such Item shall automatically revert to the Supplier.

### **6.4 Acceptance of the Item**

**6.4.1** The transfer of title and risk does not constitute acceptance of the Item by the Purchaser. Where acceptance tests are defined in the Order, acceptance of any Item delivered shall be subject to completion of the acceptance tests as per the Specification. Where no acceptance tests are defined in the Order, the Purchaser shall have the right to inspect the Item after delivery and acceptance shall take place if the Item is satisfactory to the Purchaser on inspection or, if no inspection is made, the Item shall be accepted thirty (30) days after delivery or when it is taken into use by the Purchaser, whichever occurs first. Acceptance of any Item shall not be conclusive of the absence of latent defect and shall be without prejudice to the rights of the Purchaser under the Order or at law.

**6.4.2** If the Item is not delivered in accordance with the Order, the Purchaser shall inform the Supplier in writing. Then the Purchaser may at its sole discretion, exercise the following rights:

- (i) reject the delivered Item in whole or in part and require the Supplier to refund any payment(s) made by the Purchaser to the Supplier; or
- (ii) set off the amount of any such payment(s) from any other amounts due to the Supplier from the Purchaser; or
- (iii) give notice to the Supplier to promptly replace or repair the delivered Item at the Supplier's expense and risk; or
- (iv) perform or have a third party performed operations to render the Item in conformity with the Order at the Supplier's costs if the Supplier fails to perform in due time the operations requested.

Within ten (10) days of the notification of the rejection, the Supplier must remove the rejected Item at its expense and risk, otherwise it may be returned by Airbus at the Supplier's expense and risk.

In addition, the Purchaser may require the Supplier to pay all the Purchaser's expenses, damages, losses incurred and additional costs arising from the failure to deliver the Item in accordance with the Order.

## **7. General Supplier Undertakings:**

**7.1 Compliance.** The Supplier shall ensure its compliance and the compliance of all Items with all applicable laws and/or regulations as amended from time to time in the country of manufacture and delivery and in the European Union, including, but not limited to those in connection with:

- (a) environment, health, safety, packaging and labelling (such as CE marking when applicable); and
- (b) the control, restriction, prohibition, recovery and/or elimination of inter alia, chemicals, hazardous substances and/or equipment in each case, provide such information as the Purchaser may require in connection therewith; and
- (c) transport, in particular transport of dangerous goods; and
- (d) customs and export control;
- (e) labour, employment, data protection and prohibition of corrupt practices, vigilance obligation and posting for foreign companies not located in France related to their employees and the Supplier commits to provide the Purchaser and/or his agent with all the documents, certificates, permits legally required.

The Supplier shall provide the Purchaser with the appropriate documents in compliance with Article L. 8222-10 of the French labour code ("Code de Travail").

The Supplier agrees to provide safety specification in French and in the right format (REACH extended safety data sheet – eSDS, safety manual...), at the latest at the time of the delivery of the Item.

Should the Supplier fail to comply with such laws and/or regulations, the Supplier shall indemnify and hold harmless the Purchaser from and against all consequences of such failure.

## **7.2 Quality**

### **7.2.1. Quality Management System**

The Supplier shall ensure its Quality Management System (QMS) complies with Airbus' requirements specified in Airbus' general requirements on the Supplier as provided to the Supplier upon request, and in the Specific Conditions in the Order. The Supplier's QMS shall comply with the requirements of IAQG standard 9100 or 9120, as applicable to the Item. For some General Procurement Items and some low-risk Items, another QMS (e.g. ISO9001) might be acceptable, if agreed to in writing by the Purchaser.

The Supplier shall ensure that the Order is carried out in compliance with the quality requirements of its QMS approval, as specified above. If the Supplier is a Production Organisation Approval (POA) holder or equivalent, it shall ensure that the Order is carried out in conformity with the quality requirements of its approval.

**7.2.2. Approved Sources.** The Supplier shall ensure that all standard parts, specified items, special processes and test methods used for the manufacturing of Items are purchased from Airbus-approved sources and qualified by Airbus. The Supplier shall use the qualified data list (Qualified Part List or related quality data lists within the Airbus Supply website) for its sourcing requirements.

### **7.2.3. Conformity Documentation**

7.2.3.1 The Supplier shall deliver its Items with the following minimum documentation:

- a Supplier without a POA (or equivalent), or where its POA does not cover the Item, shall attach to each delivery a Certificate of Conformity (CoC) of the manufacturer, indicating that the requirements of the applicable specifications have been met. The CoC shall include at least the following information:
  - Order number; and
  - part number; and
  - quantity and unit of measure; and
  - date of manufacture and date of expiration (where applicable); and

- lot number, serializations or other batch identifications (where applicable); and
  - signature, title and date by an authorised representative.
  - a Supplier with a POA (or equivalent), covering the Item, shall attach to each delivery an Authorised Release Certificate (EASA Form 1 or equivalent). This includes cases where the Item is only a part or sub-assembly of a product covered by its capability list.
- 7.2.3.2 Suppliers who are stockists or distributors shall attach to each delivery:
- a CoC from its company covering the Item; and
  - a copy of the CoC and a statement of undertaking established by the original manufacturer, attesting the conformity of the delivery with the Order; and
  - the inspection, test and raw material reports of the qualified Supplier, if requested by the Purchaser.

#### **7.2.4. Non-Conforming Items**

7.2.4.1 The Supplier is responsible for the quality of its supplies and shall ensure the conformity of the delivered Items with the Specification, in particular by means of pre-delivery inspections and final tests. The Supplier shall perform a root-cause analysis and take any necessary corrective action to remedy the causes of non-conforming Items, in order to prevent any recurrence and implement a suitable preventative action plan. The Supplier shall confirm implementation of the action plan to the Purchaser's satisfaction. The Supplier shall use an 8D/9S process or an equivalent methodology, substantiated by the Supplier and approved by the Purchaser.

7.2.4.2 Where a non-conformity is identified after an Item is delivered by the Supplier, the Supplier shall immediately submit to the Purchaser a "Notification of Product Quality Escape" in accordance with the IAQG standard 9131 and shall undertake all necessary corrective measures in support of the Purchaser, until resolution of the non-conformity to the Purchaser's satisfaction and completion of all corrective and preventative actions and such actions shall be undertaken without limiting the Supplier's liability to the Purchaser for any losses incurred under Article 12 below.

**7.2.5. Quality Records.** The Supplier shall inspect all incoming materials to ensure conformance with all applicable specification requirements and drawings of Items pertaining to the Order and shall document all inspection requirements and acceptance criteria to ensure they are in line with the specific requirements communicated to it by the Purchaser for the Items. The Supplier shall ensure complete identification and traceability of all related products to the raw material used and applicable documentation. All records must be stored in a controlled environment/suitable manner and according to applicable legal rules, so that they remain identifiable, legible, reproducible and available to the Purchaser.

**7.3 Personnel.** The Supplier shall be responsible for ensuring that its personnel are fully trained, skilled, qualified and capable of fulfilling all of the requirements contained in the Order and for giving any instructions or applying sanctions towards its personnel. Nothing in the Order shall be construed as giving rise to an employment relationship between the Purchaser and the employees of the Supplier.

**7.4 Advice/Delivery Notes and Conformity Documentation.** The Supplier shall, on the day of despatch of each consignment of Items, send advice notes and such conformity documentation (e.g. CoC) as may be required, in accordance with Article 7.2.3 above. One copy of the CoC or such other document as may be required shall accompany each consignment and a further copy shall be mailed to the Purchaser's goods receiving department.

**7.5 Sub-Contracting.** No substantial part of the work on the Order may be sub-contracted by the Supplier without the prior written consent of the Purchaser. If the Purchaser consents to the proposed subcontracting, the Supplier undertakes to inform the Purchaser in writing of the name and address of the subcontractors when sending the aforementioned acknowledgement of receipt. The Purchaser shall be entitled to require the modification and/or the continuation of such subcontracting for quality or program reasons. The Supplier shall remain fully responsible for the Item and shall ensure that its subcontractors comply with all provisions of the Order relevant to any subcontracted work.

**7.6 Property Issued by the Purchaser.** The Supplier shall not acquire any legal or beneficial interest in any property supplied to it by the Purchaser for performance of work on the Order. Any such property possessed or controlled by the Supplier shall be held at the Supplier's risk, stored and booked separately from other property, maintained at the Supplier's expense, clearly marked as the Purchaser's property and only used by the Supplier for the performance of the Order. At the request of the Purchaser or on completion of the Order, such property shall, unless incorporated into the Item(s), be returned promptly to the Purchaser. On reasonable written notice being given to the Supplier, the Purchaser shall have the right to enter the Supplier's premises to recover any such property.

**7.7 Offset.** The Supplier agrees to support the Purchaser in the context of its international offset / industrial cooperation commitments in accordance with the Airbus Offset Provisions accessible under the "Suppliers" section on [www.airbus.com](http://www.airbus.com), or with any offset terms and conditions specified in the Order.

#### **8. Export Control:**

**8.1** The Item or part thereof may be subject to Export Regulations. The Parties shall be responsible for complying with all Export Regulations. The Parties acknowledge that diversion contrary to Export Regulations is prohibited.

The Supplier shall identify any part of the Item which may be subject to Export Regulations at the time of the acceptance of the Order and shall provide the Purchaser and/or the Final Customer with all information concerning such applicable Export Regulations as well as with any assistance they may request in implementing such applicable Export Regulations. Amendments to such information shall be provided by the Supplier in the event of a change of the classification of the Item or in Export Regulations or an envisaged change of the classification by any government.

The Supplier shall provide a completed Export Control Classification Declaration ("ECCD") as well as a Declaration Control Statement ("DCS") at the time of the first shipment of the Item and the Purchaser will provide an End-User Statement and the programme description if necessary prior to the Order signature.

**8.2** Whenever all or part of the Item is subject to Export Regulations, and without prejudice to its obligations under this Article 8, the Supplier shall:

- a) obtain in due time, at no cost to the Purchaser, all relevant official approvals, licenses and authorisations (including any necessary Technical Assistance Agreement ("TAA")) required for the worldwide export, delivery and use of the Item by the Purchaser and/or the Final Customer in accordance with the Order and/or the End-User Statement; and
- b) to the extent authorised by law, submit to the Purchaser for review the exact wording of all applications before such applications are submitted to the relevant authority; and
- c) advise the Purchaser in writing on a quarterly basis of its progress in obtaining such approvals, licences and authorisations (including TAA), in the course of the performance of the Order; and
- d) clearly indicate on all controlled technical documents and all delivery documentation the export control classification number and the numbers of all applicable export licences; and
- e) provide the Purchaser, except if prohibited by the applicable Export Regulations, with a copy of all relevant official approvals, licenses and authorisations, including a copy of all provisos that relate to the compliance obligations of the Purchaser, Final Customer and/or the End-User, including, but not limited to, any restrictions on sublicensing, any restrictions on retransfer, any requirements for non-disclosure agreements, any limitations on employees, and any other restrictions or conditions that result in authorisation being more restrictive or not as broad as contemplated in the authorisation or licence request and/or the Order documentation. Provisos that are classified or that do not

relate to the compliance obligations of the Purchaser, Final Customer and/or the End-User may be blanked out from the copy supplied to the Purchaser, if so required by the issuing authority.

**8.3** In the event that, due to fault or negligence of the Supplier, any Export Regulations would prevent the Supplier from complying with this obligation, the Supplier shall, at its own cost, and within a timeframe compatible with the Purchaser's business needs either:

- a) obtain from the relevant authority any authorisation, with respect to the Item, necessary for the Purchaser and for the Final Customer, or
- b) replace or modify the restricted technology, including redesign and consequential qualifications, so that the Item ceases to infringe the Export Regulations, while fulfilling all requirements defined by the Order.

If, without any fault or negligence of the Supplier, the competent governmental authority fails to grant a required authorisation to the Supplier or if at any time during the term of the Order the competent governmental authority revokes or suspends such an authorisation subsequent to its grant, or grants such an authorisation subject to unacceptable conditions, the Purchaser shall be entitled, without incurring any liability whatsoever, to terminate the Order with immediate effect in whole or in part by giving a written notice to the Supplier in accordance with article 13.3.

**8.4** The Supplier shall flow down the requirements and responsibilities of this Article 8 as appropriate to its subcontractors at all levels, and obtain relevant information from its subcontractors for transmission to the Purchaser.

**8.5** Notwithstanding any other provision of the Order or any other contract entered into with the Supplier, the Supplier shall be liable for all damages, losses and liabilities incurred by the Purchaser and/or the Final Customer as the result of the Supplier's non-compliance with its obligations under this Article.

## **9. Delays:**

**9.1 Force Majeure - Excusable Delay.** Neither Party shall be responsible for nor be deemed to be in default of its obligations under the Order to the extent that such default is caused by an "Excusable Delay" (defined as an event that is unanticipated, unavoidable, and beyond the reasonable control of either Party, including without limitation, an act of God, fire, flood, explosion, earthquake, any act of government, war, insurrection or riot). The affected Party undertakes to mitigate the effects of the Excusable Delay. If an Excusable Delay occurs and causes or is likely to cause a delay in the performance by either Party of its obligations under the Order, such Party shall notify the other Party in writing immediately after becoming aware of such Excusable Delay and provide reasonable evidence of the Excusable Delay. Immediately after the Excusable Delay has ceased and subject to the provisions of Article 13.2, the affected Party shall, unless otherwise agreed in writing, resume the performance of its obligations.

### **9.2 Non-Excusable Delay**

**9.2.1** A delay by the Supplier in the performance of its obligations under the Order, which does not qualify as an Excusable Delay, shall be a "Non-Excusable Delay". In such event, the Purchaser shall be entitled to:

9.2.1.1 claim liquidated damages of 0,5% of the Order Price per calendar day of delay, unless otherwise stipulated in the Specific Conditions; and

9.2.1.2 claim, in the event that the amount of damages exceeds the total amount of the above liquidated damages, the full amount of such excess damages in respect of all losses, expenses, costs, claims and other damages incurred by the Purchaser arising from the Non-Excusable Delay.

**9.2.2** The Purchaser's right to claim liquidated damages and other damages is in addition to, and not in substitution of, any rights the Purchaser may have under the Order or at law including the right of the Purchaser to terminate the Order pursuant to Article 13.1.

## **10. Warranties:**

**10.1** Without prejudice to any other warranties, the Supplier warrants to the Purchaser that the Item and/or any part thereof shall (i) be free from any defects and be suitable for their intended use and; (ii) comprise only materials and goods which are new, of recent manufacture, merchantable and of satisfactory quality and; (iii) be compliant with the quality requirements and with the Specification, if any, of the Purchaser and; (iv) in the case of a service, be performed with all reasonable skill and care and in accordance with best industry practice.

**10.2** The Supplier shall, promptly repair or replace, at the Purchaser's request, any defective or non-compliant Item, at no cost to the Purchaser. The warranty will be for the period as specified in the Specific Conditions. If not specified, the warranty will be for a period of twenty-four (24) months from the acceptance of the Item by the Purchaser, as provided for in Article 6.4 or in the case of a service, from completion of such service. The outstanding warranty period, including the period under which the Item was under repair, shall apply to any repaired and/or replaced Item as from the date of its first use after such repair or replacement, or in the case of a service, on resumption of such service. The Supplier shall be liable for all costs incurred by the Purchaser, as a consequence of the defect or non-compliance of the Item or service, including but not limited to, removal, reinstallation, transport, certification and tests.

**10.3** This Article shall apply in addition and without prejudice to any other rights and remedies under the Order and/or available to the Purchaser at law. The Parties' rights under the Order shall remain in effect until expiration of all warranties following delivery of the Items.

## **11. Price and Payment:**

**11.1 Price:** Unless otherwise specified in the Specific Conditions, prices are fixed and firm and shall be based on the delivery of the Item, as per Article 6.3.1, to the place specified in the Specific Conditions of the Order. No additional charge shall be made by the Supplier for packing, insurance or delivery unless otherwise agreed by the Parties and set out in the Specific Conditions and any such charge shall be separately identified in the Supplier's invoices.

**11.2 Taxes:** Prices are exclusive of Value Added Tax and inclusive of, and the Supplier shall be liable for and pay, all other relevant taxes, levies and duties in connection with the Item, if any.

**11.3 Invoices:** For payment purposes, the Supplier shall issue an invoice concurrently with the delivery of the Item and send it for the attention of the Purchaser's accounting department as specified in the Specific Conditions of the Order as well as with the documents accompanying the Item when delivered to the Purchaser. Each invoice shall include the designation, reference and quantity of Items, the Order and item numbers, the price, the actual delivery date, names and addresses of the Parties, any specific terms or conditions and reference to a discount, if any. The Supplier shall, if requested by the Purchaser, issue its invoices in an electronic format, as specified by the Purchaser.

**11.4 Payment:** Payments shall be made by electronic bank transfer to the Supplier's nominated bank account, provided that the invoice received from the Supplier is valid, accurate and due. The Purchaser will make payments only for those Items which have been delivered in accordance with the terms of the Order. In the event of a dispute between the Parties, the Purchaser shall be entitled to withhold the payment of any disputed element of the invoice until resolution of such dispute. Payments with respect to Items shall be made thirty (30) days from the end of the month in which the invoice is issued, paid the tenth (10<sup>th</sup>) day of the next calendar month (30EOM10). Should the payment day be a Saturday, Sunday or a bank holiday then the payment shall be made the following business day.

**11.5** If any amount due to the Supplier remains unpaid after the date on which it is payable (the Due Date), the Supplier shall be entitled to charge interest on such sum from the Due Date until the actual date of payment of such a sum, both before and after any judgment, at a rate of

three (3) times the legal interest rate ("*taux d'intérêt légal*") in effect on the Due Date. Penalty interest shall begin to accrue on the first day immediately following the Due Date. In addition to the interest rate, the Purchaser will have to pay a compensation recovery equal to forty (40) euros.

**11.6** Without prejudice to any other right or remedy of the Purchaser, the Purchaser reserves the right to set off any amount owing at any time from the Supplier to the Purchaser against any amount payable by the Purchaser to the Supplier in respect of an Order, or otherwise due from the Purchaser to the Supplier.

## **12. Liability and Insurance:**

**12.1** The Supplier is liable to the Purchaser for all costs, losses, damages and liabilities, including without limitation, costs and expenses incidental thereto, which may be incurred by the Purchaser as a consequence of the failure by the Supplier to comply with any of its obligations under the Order. The Purchaser agrees to provide the Supplier with a breakdown of the said damages.

**12.2** Each Party shall be liable for, indemnify and hold harmless the other Party, its officers, directors, employees and/or insurers from and against any and all claims, losses, liabilities, suits, judgements, expenses and costs (including legal fees) or the like in any way connected with the death of or injury to any person whomsoever, or loss of or damage to any property of any person, entity or company (including the other Party) when arising out of, or having its origin in, the acts or omissions of the indemnifying Party in connection with the performance of the Order.

### **12.3 Insurance**

**12.3.1** To the extent that the performance of this Order requires the presence of the Supplier's employees, agents or sub-contractors on the site(s) of the Purchaser or other designated sites, the Supplier shall effect and maintain employers' liability insurance and public liability insurance commensurate with the exposure potential for loss of or damage to property of the Purchaser or death of or injury to persons resulting from performance of the Order and such insurance cover shall not be less than the minimum figure advised by the Purchaser to the Supplier from time to time.

**12.3.2** The Supplier shall effect and maintain product liability insurance in respect of any of the Items that are to be incorporated into the Final Product. Such product liability insurance must be commensurate with the exposure potential of the Items when incorporated into the Final Product and shall not be less than the minimum figure advised by the Purchaser to the Supplier from time to time.

**12.3.3** If the Supplier is required to carry out work which requires professional indemnity insurance, the Supplier shall provide the Purchaser with a certificate of insurance or such other evidence reasonably satisfactory to the Purchaser that such insurance is in full force and effect.

**12.3.4** The Supplier shall provide the Purchaser with a certificate of insurance or such other evidence reasonably satisfactory to the Purchaser that the above insurances are in full force and effect in respect of the Supplier's obligations under the Order.

## **13. Termination / Suspension:**

**13.1 For Supplier's Default.** In the event the Supplier breaches or fails to comply with one or more of its obligations herein, the Purchaser may give the Supplier written notice of such breach or non-compliance at any time thereafter. The Supplier shall remedy such breach or non-compliance within twenty-eight (28) days from the date of such notice. If the Supplier does not remedy the breach or non-compliance within the said twenty-eight (28) days or if the breach is not capable of remedy then the Purchaser shall, without incurring any liability whatsoever, have the right to immediately terminate the Order in progress (in whole or in part) by giving written notice of termination to the Supplier to that effect, without prejudice to the Purchaser's rights to claim damages and/or any other remedies which the Purchaser may have at law and/or under the Order. The provisions of Article 13.4 below shall apply and the termination account shall proceed accordingly.

**13.2 For Excusable Delay.** In the event that an Excusable Delay exceeds or is expected to exceed thirty (30) days following the occurrence of the cause thereof, each Party shall be entitled to terminate forthwith the Order, or any part thereof, by giving written notice of termination to the other Party, without incurring any liability whatsoever.

**13.3 Termination without Supplier's Default/Cancellation of Order** The Purchaser may terminate the Order (in whole or in part) without fault of the Supplier, by giving a thirty (30) day prior written notice of termination to the Supplier, without incurring any liability whatsoever save that the provisions of Article 13.4.3 below shall apply and the termination account shall proceed accordingly.

### **13.4 Termination Procedures**

**13.4.1** As of the effective date of termination, the Supplier undertakes to cease all further performance related to the terminated Order (unless otherwise instructed by the Purchaser) and the Supplier shall comply with all directions or instructions regarding the Items which the Purchaser provides to the Supplier.

**13.4.2 Termination for Supplier's Default.** The Supplier shall be liable for all losses, expenses, costs, claims and damages incurred by the Purchaser as a result of a breach by the Supplier of this Order or of the Conditions. The Supplier shall indemnify the Purchaser in full against any losses, expenses, costs, claims or damages whatsoever (including without limitation legal costs) resulting from the negligence, willful misconduct, breach of contract or breach of statutory duty caused by the acts or omissions of the Supplier, its employees, sub-contractors or agents in performance of the Order or in connection with any defect in an Item.

**13.4.3 Termination for Excusable Delay/without Supplier's Default.** The Purchaser and the Supplier shall agree a fair and reasonable price for all work done and material purchased for the purpose of carrying out work on the Order up to the date of termination. In order to agree such price, the Supplier shall submit an account to the Purchaser within three (3) months from the date of termination in a form satisfactory to the Purchaser. The agreed price, together with any sums paid or due to the Supplier under the Order before the effective date of termination shall not exceed the total price of the Items under the Order and such payments shall be the Purchaser's sole liability in respect of the termination.

**13.4.4** Any termination of the Order by the Purchaser for whatever reason shall be without prejudice to any rights or remedies which may have accrued to the Purchaser prior to termination and the Purchaser shall use its reasonable endeavours to mitigate its loss on any termination.

**13.5 Surviving Articles.** All Articles in the Order and these Conditions which by their nature should survive expiry or termination of the Order shall remain in full force and effect after such expiry or termination.

**13.6 Suspension.** The Purchaser reserves the right to request at any moment that all or part of the work under the Order be stopped for a maximum period of six (6) months or rescheduled, without having to indemnify the Supplier for expenses that may result from this suspension or rescheduling.

## **14. Intellectual Property Rights:**

**14.1** All intellectual property created as a result of the work undertaken by the Supplier or its sub-contractors for the purpose of the Order, or for the supply of the Items, shall automatically be transferred to the Purchaser and all such rights shall vest in and be the sole property of the Purchaser. If, however, by operation of law, the Supplier is deemed the owner to the rights for such newly created intellectual property, the Supplier hereby grants to the Purchaser, and will cause its employees, agents and contractors to grant to the Purchaser as soon as created and in consideration of the price set forth in the Order, an irrevocable, royalty free, transferrable, worldwide licence for full exploitation rights of the created intellectual property including the right of reproduction in any form, language, format and medium, the right of distribution in part or in

whole including the right to sell, loan, rent, distribute, download by any means and in any language, the right to modify, adapt, improve, correct and translate in any form and language, and interface with any other item, including the right to sub-license all the above-mentioned rights.

**14.2** The Supplier undertakes to execute any assignment or other documentation necessary to give effect to the transfer of the intellectual property created as a result of the work undertaken by the Supplier or its sub-contractors for the purpose of the Order to the Purchaser.

**14.3** The Supplier hereby grants to the Purchaser, at no additional charge beyond the price specified on the Order, an irrevocable, non-exclusive and worldwide licence to hold, use and sub-license for the benefit of third parties all relevant Supplier's background intellectual property necessary for the performance of the Order or the use of the Item for the duration of the rights, which the Supplier shall ensure lasts at a minimum for the duration of the Purchaser's reasonable intended use of the Items. The Supplier grants the Purchaser the right to sub-license all the above-mentioned rights.

**14.4** In addition, and in the case of customised or altered off-the-shelf Items and non-off-the-shelf Items, such licence granted by the Supplier to the Purchaser shall include for the Purchaser the right of reproduction in any form, language, format and medium, the right of distribution in part or in whole including the right to sell, loan, rent, distribute, download by any means and in any language, the right to modify, adapt, improve, correct and translate in any form and language, and interface with any other item. The Supplier grants the Purchaser the right to sub-license all the above-mentioned rights.

**14.5** It is the responsibility of the Supplier to avoid the use, in any manner and for any purpose, throughout its contractual chain, of an OSS (Open Source Software) component that would result in a viral/contamination effect of the software produced and/or delivered in the frame of the Order. The Supplier shall request the authorisation from the Purchaser to introduce OSS components under OSS license for the purpose of the software to be delivered.

**14.6 Infringement Indemnity.** With respect to any third party claims, suits or actions relating to the infringement or alleged infringement of any intellectual property rights of a third party in relation to the Items purchased or the Order, the Supplier shall defend, fully indemnify and hold harmless the Purchaser, its agents, successors and assigns, against any and all costs, losses, damages, liabilities, expenses (including legal fees), fines or other financial sanctions or loss of profit which may be incurred as a result of any alleged or proven infringement.

The Supplier shall promptly inform the Purchaser of any dispute or claim (legal or otherwise) that arises with a third party and the substance of such dispute or claim.

The Parties shall consult closely in relation to defending such claims, suits and actions.

#### **15. Confidentiality and Publicity:**

**15.1** Any and all information relating to the Order and communicated by the Purchaser to the Supplier, or to which the Supplier may have access in connection with the Order, and/or any information in any form, on any medium, which is declared as being confidential or which can reasonably be regarded as confidential because it is by its nature, commercially sensitive or is manifestly of a confidential nature shall be referred to as "Confidential Information".

**15.2** The Supplier shall use Confidential Information exclusively for the purposes of the Order. Disclosure of Confidential Information to the Supplier's personnel shall be for the purpose of performance of this Order only and shall be on a strictly need-to-know basis. The Supplier shall not disclose any Confidential Information to any third party without the Purchaser's prior written consent.

**15.3** The Supplier shall be under no obligation of confidentiality if it can prove that the Confidential Information was (i) already publicly known when the Supplier gained access to it or (ii) that it became publicly known through no fault of the Supplier after it gained access to it or (iii) that the Supplier was able to lawfully gain access to the Confidential Information.

**15.4** The obligations herein relating to confidentiality shall remain in full force and effect for the duration of any Order and continue for a period of ten (10) years after the expiry or termination of the Order.

**15.5** Neither Party shall make any news release or public announcement referring to the Order, nor use, reproduce or imitate for any purpose whatsoever any of the filed, registered or unregistered trademarks of the other Party, including its company names, associated logos, programme names or logos associated with its products or services, unless a prior written consent is given by the other Party.

#### **16. Assignment and Transfer:**

The Purchaser shall be entitled to assign or transfer at any time all or part of its rights, warranties, benefits, remedies and obligations under the Order to any third party. The Supplier shall not assign or transfer any of its benefits, rights, remedies and/or obligations under the Order to a third party without the prior written consent of the Purchaser.

#### **17. Applicable Law and Settlement of Disputes:**

**17.1 Applicable Law.** This Order shall be governed by and construed and shall take effect in accordance with the laws of France, excluding the application of the 1980 "United Nations Convention on Contracts for the International Sales of Goods".

**17.2 Amicable Resolution.** In the event of any dispute, controversy or claim (a "Dispute"), arising out of or in connection with this Order including any question regarding its existence, validity or termination, the Parties shall make every effort to resolve the Dispute amicably within a period of three (3) months following written notification of a Dispute by one to the other.

**17.3 Arbitration.** If the Parties fail to amicably resolve the Dispute within the three (3) month period referred to above, such Dispute shall be finally determined and settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce. The number of arbitrators shall be three (3) and the place of arbitration shall be Paris (France). The language to be used in the arbitral proceedings shall be English.

**17.4** The existence and content of the arbitral proceedings and any rulings or award shall be kept confidential by the Parties and members of the arbitral tribunal except (i) to the extent that disclosure may be required of a Party to fulfil a legal duty, protect or pursue a legal right, or enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority, (ii) with the consent of all Parties, (iii) where such information is already in the public domain other than as a result of a breach of this Article, or (iv) by order of the arbitral tribunal upon application of a Party.

**17.5** The Parties may, by agreement in writing following the notification of the Dispute, elect to adhere to a different form of alternative dispute resolution or to litigate in courts of law, in order to resolve the Dispute. The Parties expressly agree that the time limit to bring an action in relation to the Order ("extinctive prescription") is ten (10) years from expiration of the last applicable warranty.

**18. Amendments:** The Order including these Conditions shall not be amended except by specific agreement in writing (including changes and amendments to this Article), signed by duly authorised representatives of the Parties.

**19. Independent Contractors:** The relationship of the Parties under these Conditions shall be that of independent contractors. Neither Party shall have the right to contract or in any other way to enter into commitments on behalf of or in the name of the other Party.

#### **20. Whole Agreement:**

**20.1** This Order constitutes the entire agreement between the Parties in relation to its subject matter. It replaces and extinguishes all prior agreements, draft agreements, arrangements, collateral warranties, collateral contracts, statements, assurances, representations and undertakings of any nature made by or on behalf of the Parties, whether oral or written, in relation to that subject matter.

**20.2** Each Party acknowledges that in entering into this Order it has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the other Party in relation to the subject matter of this Order at any time before its signature (together "Pre-Contractual Statements"), other than those which are set out in this Order. Each Party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements.

**20.3** Nothing in this Article 20 shall exclude or restrict the liability of either Party arising out of its pre-contract fraud or fraudulent misrepresentation.

**21. Notices:** Unless otherwise specified, all notices and communications between the Purchaser and the Supplier in respect of the Order shall be in writing and sent by hand, mail, electronic mail, facsimile, or messenger service to the Procurement Department at the Purchaser's facility identified in the Specific Conditions. The date of delivery of any such notice or communication shall be the date of despatch, if delivered by hand, electronic mail, facsimile or messenger service, or five (5) days after mailing, if delivered by mail.

**22. Waiver:** Failure or delay at any time by either Party to enforce any provision of the Order, or any part thereof, shall not constitute a waiver of such provision or affect the validity of the Order or any part thereof, nor prejudice the right of the affected Party to enforce such provision at a subsequent time.

**23. Severability:** Any provision of the Order prohibited by, or unlawful or unenforceable under the applicable law actually applied by any court of competent jurisdiction shall, to the extent required by such law, be severed from the Order and replaced with another provision having substantially the same effect without it modifying the remaining provisions.

**24. Inducements:** Neither Party shall accept from or give to any person or party any commission, gift or other financial benefit or inducement (collectively defined as an "Inducement") and shall procure that its employees, agents and subcontractors will not accept or give any such Inducement and will immediately provide details to the other Party of receipt of an offer of an Inducement.

**25. Language:** These Conditions have been drawn up in English and only this language version shall be deemed authentic. Any translation of these Conditions into a language other than English shall be for information purposes only. All notices, correspondence, communication and documentation to be issued, exchanged or delivered to either Party in connection with this Order shall be in English.