



**T&C Purchase  
ASP Equipment GmbH (ASP) 05/2017**

To the extent legally possible, the following terms and conditions for purchase activities (hereinafter "T&C") shall form an integral part of any underlying delivery or services contract or order (hereinafter "Contract" or "AGREEMENT") between ASP Equipment GmbH (hereinafter "ASP") and its subcontractor. The Parties explicitly declare to have read and understood these T&C.

**Article 1: Subject and Performance of the Contract**

The AGREEMENT between the parties consists of the following documents which are listed in their order of precedence, to be followed in the event of any conflict or inconsistency between their terms:

	Document / Provisions
	The provisions of these T&C
Appendix 1	Technical Documents, Specifications, Requirements, Data Sheets

Any differing terms and conditions of the Subcontractor shall be excluded, even if they may appear in its proposal, invoices or any other documents, even if ASP does not explicitly contradict them or even if the Subcontractor declares its wish to deliver only on its general terms and conditions.

These ASP T&C also apply for all future contracts or orders between the parties, even though they are not explicitly mentioned.

**Article 2: Price and Payment**

2.1 The agreed price covers possible tests, packing and transport. The price is a firm fixed price (Total Price) and hence is not subject to adjustment for changes in economic conditions or actual costs incurred. As far as not otherwise stated herein, the price includes all taxes and duties which are payable under any present or future law with the exception of the Value Added Tax (VAT). The Subcontractors indemnifies and holds ASP harmless of any taxes and duties.

2.2 Each milestone amount shall be payable within 30 (thirty) days after receipt by ASP of an invoice from the Subcontractor pursuant to sub-article 2.4 below and upon successful completion of the requirements.

2.3 Each invoice shall be sent per letter or telefax in 1 original and 1 copy to:

ASP Equipment GmbH  
Am Wasserstall 2  
D-88682 Salem/Neufrach  
Germany  
Fax: +49 (0) 7553 5909 111

Any invoices sent by email shall not be considered as valid.

2.4 In the event of any amount payable by either party is not made by the debtor when due, the other party shall be entitled to claim interest limited at the EURIBOR Euro 3 (three) months rate + 1 % (one per cent) pro rata on a daily basis from the date following the due delivery date until the date of actual payment. Further claims for late payment are excluded to the extent legally permissible. The Subcontractor has the burden of proof for ASP's receipt and date of receipt of an invoice. In case of any doubt about the receipt of an invoice, the Subcontractor shall issue another invoice.

2.5 Set-offs of the Subcontractor counterclaims can solely be exercised if they are undisputed or finally legally binding. A Subcontractor's right of retention and/or a defence based on ASP's non-

performance can be claimed by the Subcontractor only with the Subcontractor's claims of this AGREEMENT.

**Article 3: Delivery and Acceptance**

3.1 Delivery: All Deliverable Items shall be delivered DDP including insurance (INCOTERMS 2000) to the destination specified or, if not specified, to ASP's location.

The Subcontractor acknowledges and agrees that the achievement of the scheduled dates shall under no circumstance be later than the dates defined therein. The Subcontractor understands and agrees that these dates are a material and essential requirement of this AGREEMENT.

ASP may at its discretion postpone each delivery date up to max. 6 (six) months without any additional costs for ASP.

3.2 Acceptance: Acceptance of the deliverables will only be declared after successful incoming inspection and on closure of all open actions and fulfillment of any other requirements as may be required. In case of any doubt, related payment shall not be construed as declaration of acceptance. The supplier waives its right to object to possible ASP's delayed notice of defects acc. to § 377 German HGB.

3.3 If ASP has informed the Subcontractor about the intended use of the deliveries, or if the Subcontractor could know such use purpose without being expressly advised of it, then the Subcontractor is obliged to inform ASP immediately in the event that the Subcontractor's deliveries are possibly unsuitable for such use purpose.

**Article 4: Penalty**

4.1 The Subcontractor understands and agrees that the times as specified are of the essence of this AGREEMENT. Without prejudice to its obligations under this AGREEMENT, the Subcontractor shall notify ASP in writing within 3 (three) business days of any known or anticipated delay in the performance of its obligations hereunder, stating the reasons for the delay and which action is being taken to overcome such delay.

4.2 In the event that the actual fulfilment of deliveries occurs later than the agreed date, the Subcontractor shall pay to ASP for each day of lateness 0,1% (zero point one per cent) based on the value of all outstanding deliveries, or in case of any doubts, based on the Total Price. The total amount of penalties payable by the Subcontractor pursuant to this sub-article shall not exceed 10 % (ten percent) of the Total Price. ASP reserves the right to claim penalties, even though ASP declared acceptance and/or released final payment without such restriction.

**Article 5: Force Majeure**

Delays in delivery or any other milestones, resulting from but not limited to acts of God, natural catastrophes or any other events, which in every case are beyond the reasonable control and without the fault or negligence of the Subcontractor and/or its lower tier subcontractors, and which could not have been avoided by the Subcontractor through the exercise of reasonable foresight or reasonable precautions and which cannot be circumvented by the Subcontractor through use of its best efforts to establish work around plans or other means, shall constitute a force majeure event. The Subcontractor shall provide written evidence of the period of such delay within 10 (ten) business days. The parties shall negotiate in good faith any adaptation of this AGREEMENT and its applicable documents, considering the reasonable interests of ASP and the Subcontractor.

**Article 6: Title and Risk**

Risk in each Deliverable Item shall pass from the Subcontractor to ASP upon successful delivery conforming to the relevant requirements.

Title to each Deliverable Item under this AGREEMENT shall pass to ASP after delivery.

In case any such Deliverable Item is returned to the Subcontractor, risk in such Deliverable Item shall revert to the Subcontractor when leaving ASP's premises.

#### Article 7: Warranty

7.1 The Subcontractor hereby explicitly warrants that

- the work will be performed in a skilful and workmanlike manner and conforms with the requirements and specifications of this AGREEMENT, especially with the defined quality and quantity; and
- good title to all deliverables is being delivered free and clear of any liens, interests and encumbrances of any kind.

7.2 ASP is entitled, at any time up to the expiration of the warranties set out in this article and without restrictions of any kind, to require that any work not conforming to the requirements or any bugs or viruses in Software, be promptly corrected, repaired or replaced at ASP's discretion and at Subcontractor's expense. However, if the Subcontractor refuses or fails to correct, repair or replace such non-conforming work within a reasonable period after notification from ASP, then ASP may, at its option, either require the Subcontractor to repay such portion of the Total Price as is equitable in all the circumstances in lieu of correcting, repairing or replacing such defective work or have a third party correct, repair or replace such non-conforming work and invoice the Subcontractor for its reasonable costs incurred in so doing.

7.3 The above warranties shall extend, in the case of all Deliverables for a period of 3 (three) years from acceptance and in the case of non-conforming work corrected by the Subcontractor for a period of 2 (two) years after the date of correction.

7.4 The remedies identified in this article are in addition to any other remedies available to ASP either under this AGREEMENT or at law.

7.5 The Subcontractor undertakes to thoroughly examine the deliverables for defects and to avoid any product liability or liabilities based on other legal grounds. The Subcontractor is obliged to take out appropriate insurance against all damage risks in conjunction with product liability.

7.6 The Subcontractor guarantees the availability of any components, spare parts, design/development/manufacturing/service know-how documents and corresponding qualified personnel for a period of 15 (fifteen) years after acceptance of the deliveries.

#### Article 8: Subcontracts

8.1 The Subcontractor is fully responsible to ASP for the proper performance of all lower tier subcontractors and of all persons used by the Subcontractor in connection with the performance of the work. Any failure by a lower tier subcontractor to meet its obligations to the Subcontractor shall not relieve the Subcontractor from meeting any of its obligations.

8.2 As far as ASP informed the Subcontractor about ASP's Customer or any higher tier Customer provisions, the Subcontractor accepts such provisions and shall ensure that all its lower tier subcontracts include such provisions.

#### Article 9: Access to Work

Upon request by ASP, at any reasonable time during the performance of the work, the Subcontractor and his lower tier subcontractors shall provide and enable access to office space and the work including the related data and information for ASP, ASP's Customer, any higher tier Customer staff members, consultants and/or authorities at the Subcontractor's or Lower Tier Subcontractors facilities free of charge. This shall in no way relieve the Subcontractor from performing its obligations under this AGREEMENT.

#### Article 10: Intellectual Property Rights and Confidentiality

10.1 "Intellectual Property Rights" (IPR) means all rights in Subject Inventions, Patents, Background Patents, Foreground Data,

Background Data, Software and any other right in intellectual property including modification, enhancement and correction rights.

"Programme" in this context means such particular programme, for which the Deliverables are procured under this AGREEMENT.

"Background IPR" means all such IPR owned by or within the disposition of a Party prior to signature of this AGREEMENT and that developed or otherwise acquired thereafter independently of this programme and without the use of any Programme funding.

"Foreground IPR" means all other IPR developed or otherwise acquired under the Programme.

"Right to Use" means all user rights including any modification, enhancement and correction rights.

10.2 Third Party Rights: The Subcontractor declares that he has unlimited rights of disposal and that no third party rights exist with respect to IPR or any Deliverable. The Subcontractor shall, at its expense, defend ASP from and against all claims, actions or proceedings against ASP based on any allegation that the usage of the work or any part thereof constitutes an infringement of any third party IPR. The Subcontractor shall hold harmless and indemnify ASP for all costs and damages, occasioned to ASP by reason thereof. At the request of ASP, the Subcontractor shall, at its expense, provide ASP with reasonable information, assistance and authority for its defense.

The following sub-articles 10.3 to 10.7 shall only be applied in case where ASP ordered design / development parts or undertakings of the Subcontractor which are specifically undertaken with respect to ASP's technical requirements.

10.3 Ownership: The Subcontractor shall retain the ownership of any IPR developed by him.

10.4 Foreground IPR: The Subcontractor hereby grants to ASP and its higher tier Customers free of charge an irrevocable, exclusive and world-wide Right to Use and right to sublicense any Foreground IPR.

10.5 Background IPR: The Subcontractor hereby grants to ASP and its high tier Customers of the Programme free of charge an irrevocable, non-exclusive and world-wide Right to Use and right to sublicense any Background IPR for the sole purpose enabling the practice of IPR for the particular programme.

10.6 Joint IPR: In the event of any IPR jointly made by the Parties and resulting from the performance under this AGREEMENT the ownership and the user rights of such shall be jointly shared and the details of the their application and implementation, in particular on how any joint IPR applications are to be made and upon such other provisions with regard to the protection of joint IPR (including the sharing of costs and fees and the restriction of publication of IPR data), as well as the range of corresponding user rights to be defined, shall be agreed between the Parties on a case by case basis. In cases comparable to those as defined in sub-article 10.6, these provisions below shall be applied analogously.

10.7 Patent Application: If the Subcontractor (a) does not wish to apply for a patent; or (b) intends to abandon a patent or a patent application; or (c) causes any patent to become unenforceable in any country, he shall promptly notify ASP and shall, upon request, transfer all rights, title and interest including the delivery of all information related thereto free of charge to ASP.

#### Article 11: Confidentiality

Both parties undertake during the period legally relevant according to applicable laws, at least however for a period of 5 (five) years from the date of disclosure in each case in respect of any Proprietary Information, including this AGREEMENT, its Appendices and documents, oral and other communication, emails etc.:

- to keep such Proprietary Information confidential and in adequate care;
- not to copy or to cause to be made copies of or to otherwise use such Proprietary Information, in whole or in part, other than for the purpose of this AGREEMENT, or disclosure thereof whether

directly or indirectly to any third party unless approved by the other party;

- not to disclose such Proprietary Information to any personnel within their organizations who do not have a need to receive such Proprietary Information for the purpose of this AGREEMENT;
- to follow the other party's reasonable confidentiality instructions and or security interests to be announced to the disclosing party on a case-by case-basis.

The obligations under this sub-article shall continue and survive the completion of the term, termination or assignment of this AGREEMENT.

#### **Article 12: Governmental Authorisations / Export**

The Subcontractor shall be responsible for obtaining and maintaining all governmental authorisations (including, but not limited to Technical Assistance Agreements, export and import licences) necessary for the performance and the delivery of the Deliverables to ASP and the relevant end user(s).

#### **Article 13: Changes**

13.1 ASP may request for any modifications. Should ASP exercise the right of modification, the Subcontractor shall immediately inform about the technical implementation and the effect on the completion dates, price and on any other terms of the AGREEMENT. The parties shall negotiate in good faith and agree on all change aspects including cost and schedule. Notwithstanding the above such changes approved or ordered by ASP shall be followed by the Subcontractor without any further suspension or delay, subject to adequate financial coverage to start working.

13.2 The Subcontractor may propose to the ASP modifications such as to improve the conditions of performance of the work or the quality of the supplies.

#### **Article 14: Termination**

14.1 Termination for default: The Subcontractor acknowledges and agrees that the following reasons constitute a material breach of this AGREEMENT, which entitles ASP to terminate the AGREEMENT in total:

- the Subcontractor becomes bankrupt or is involved in filing for or has filed against him a petition in bankruptcy or the Subcontractor is placed under official management or carries on his business under a receiver, trustee or manager; or
- the Subcontractor's significant change in its company shares and/or its actual control situation, or the other Party's intended or actual abandonment of the corresponding business activities in a significant manner which endangers the due fulfilment of the corresponding obligations of this AGREEMENT; or
- the Subcontractor refuses or fails to remedy non-conforming work within a reasonable period after notification from ASP;
- failure to obtain or maintain a government authorisation due to the default or lack of due diligence of the Subcontractor;
- any other material breach, which is not cured by the Subcontractor within 30 (thirty) days of notice from ASP.

#### 14.2 Consequences of termination for default:

In the event of ASP's termination for default, ASP may, at its option, take over possession and title of the uncompleted work or parts of it and complete it or have it completed and utilise in completing the work such materials, appliances, IPR or any other items as may be necessary therefore for a price corresponding to the part of the work taken over by ASP. The Subcontractor shall be liable and reimburse ASP for all increased costs properly incurred by ASP in completing such work. If ASP does not exercise the remedy specified here above, then the Subcontractor shall reimburse ASP for all amounts previously paid by ASP in respect thereof, with the exception for the part of the uncompleted work, which ASP has selected to take over or maintain possession and title. The Subcontractor shall pay interest on the amounts reimbursed calculated from the actual date of receipt of payment to such date of reimbursement using the EURIBOR Euro 3 (three) months rate + 1% (one per cent).

#### 14.3 Consequences of termination for excessive force majeure:

In the case of one or more events of force majeure having an effect on the ability of the Subcontractor to deliver the Deliverables in accordance with the dates defined, if the effect is, or highly likely to be, to delay such delivery by more than 30 (thirty) days, ASP may rescind from the AGREEMENT by written notice, in which case, the Subcontractor shall refund all payments made by ASP to such point, with the exception for the part of the uncompleted work which ASP has selected to take over or maintain possession and title, and all rights and obligations of the Parties shall cease.

#### 14.4 Government authorisations:

With respect to termination for failure of the Subcontractor to obtain or maintain a government authorisation for reasons other than due to its default or lack of due diligence then the consequences of sub-article 13.5 shall be applied analogously. Neither ASP nor the Subcontractor shall have any further liability to each other in respect of the performance of the work or part of the work so terminated.

14.5 Rejection of proper obligations: In the event one Party's economic status significantly deteriorates or is evidently anticipated to such extent that the fulfilment of such Party's main obligations is abstractly endangered, the other Party is entitled to reject the performance of its own obligations until the concerned Party either duly fulfilled its obligations or provided appropriate security.

The following sub-articles 14.6 and 10.7 shall only be applied in case where ASP ordered undertakings of the Subcontractor which are specifically undertaken with respect to ASP's technical requirements.

14.6 Termination at ASP's convenience: ASP shall have the right to terminate the AGREEMENT in whole or in part at any time by giving written notice to the Subcontractor. From the time of receipt of such notice of termination the Subcontractor shall observe the conditions herein concerning the winding up of part or all of the work, both on his part and on that of his Lower Tier Subcontractors. The Subcontractor shall cease work as directed in the termination notice, terminate orders and Lower Tier Subcontracts and issue no further orders or Lower Tier Subcontracts in connection therewith and promptly settle all outstanding liabilities and claims arising out of such termination of orders and subcontracts.

#### 14.7 Consequences of termination at ASP's convenience:

Should ASP exercise its rights under sub-article 13.1, ASP will reimburse the Subcontractor for expenditures reasonably incurred or not avoidable under the AGREEMENT, in EURO, on time and material basis to be verified by an independent auditor in case of any conflict. Notwithstanding the above, in the case of partial termination, the termination charges shall not exceed the portion of the Total Price attributable to the part of the work terminated. The termination charges determined shall be reduced by any milestone payments already made by ASP to the Subcontractor with respect to the performance of the work prior to termination and by any amounts representing the possible resale, reuse, or salvage value to the Subcontractor, or to its Lower Tier Subcontractors and suppliers.

14.8 The rights identified in this article are in addition to any other remedies available to ASP either under this AGREEMENT or at law or equity.

#### **Article 15: Customer Furnished Items**

The Subcontractor agrees, with respect to all Customer Furnished Items (CFI), including but not limited to equipment, models, devices and any facilities, furnished by ASP or the Customer under this AGREEMENT shall be used solely in the performance of this AGREEMENT. The Subcontractor approves further

- that he shall assure himself of the suitability and condition of the CFI. The cost of any fixtures or other specific adaptations shall be borne by the Subcontractor;

- that title to such CFI shall remain exclusively in ASP or the Customer, ensuring that no lien, encumbrance, pledge or other interest whatsoever attaches to such CFI. In the event of modification of the CFI, ASP shall retain title, unless otherwise agreed. In any case of an inseparable integration or amalgamation with other items, ASP shall acquire ownership as is equitable to the value of its CFI before such integration.
- that risk in each such property shall pass from ASP to the Subcontractor upon its delivery. The Subcontractor shall be responsible for subsequent handling, storage, maintenance, reasonable wear and tear excepted,
- to be responsible for payment of all taxes or other expenses which become due by reason of the Subcontractor's or any Lower Tier Subcontractor's possession, control or use of such CFI, and to comply with all requirements of said laws, including making payment of any interest or penalties related thereto;
- except as may otherwise be provided in this AGREEMENT to pack and return such CFI at its expense to ASP upon completion of all work or termination of this AGREEMENT. Risk in the CFI shall revert to ASP when arriving at ASP's premises.

17.6 Language: Unless otherwise agreed, all correspondence, documentation, information, commitments or changes etc. related to this AGREEMENT shall be made in the German or English language.

ASP or the Customer shall not be liable for any special, indirect or consequential damages related to such CFI or arising from the use or possession thereof.

#### **Article 16: Compliance with the law**

16.1 The Subcontractor shall comply with the requirements of any laws of any place in which any part of the work is to be performed and with the lawful requirements of any authorities affecting or applicable to the work, in particular including, but not limited to the European directives concerning product liability such as the requirements for CE marking, the declaration of conformity and conformity assessment procedures, health & safety and environmental protection regulations incl. those for hazardous goods.

16.2 Unless otherwise provided for herein, the Subcontractor shall at its own expense obtain any permits, licenses, approvals or certificates necessary for the performance of the work. The Subcontractor shall perform the work in accordance with the conditions of any applicable permits or licenses, approvals or certificates. However, the Subcontractor remains liable towards ASP for due fulfilment of all requirements of this Agreement.

16.3 The Subcontractor shall keep ASP and its Customer including their officers, employees, agents, subcontractors et al. harmless and indemnify them from and against any or all losses, damages, liabilities, demands and any expenses arising from or as a consequence of such infringement.

#### **Article 17: Legal Considerations**

17.1 Applicable Law: This AGREEMENT shall be governed by the law of the Federal Republic of Germany with the exception of its conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) 1980 shall not apply.

17.2 Place of Fulfilment: Place of fulfilment is the place of ASP's registered office.

17.3 Assignment: No Party shall assign any of its rights and obligations hereunder except with the prior written consent of the other Party.

17.4 Partial Invalidity: The invalidity in whole or in part of any provision of this Contract shall not void or affect the validity of any other provision or the total AGREEMENT. The parties agree to modify the invalid provision by a valid provision. In case of any doubt, the corresponding provisions of German laws are applicable.

17.5 Entire Agreement: This AGREEMENT constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes any or all prior or contemporaneous agreements including authorisation to proceed / limits of liability agreements or understandings of the Parties unless modified.