

EOS GmbH General Terms and Conditions for Purchases of Goods, Works and Services

§ 1 Scope

These Conditions shall apply to all supplies, services and licenses of any kind (including any goods, rights, licenses or tangible or intangible works, collectively "Deliverables") which we, EOS GmbH Electro Optical Systems ("EOS" or "We") receive from third parties ("Supplier(s)"). These Conditions shall apply and shall be deemed part of the contract of sale or the service, license or other agreement between EOS and the Supplier (hereafter collectively referred to as "Contract") except if and to the extent that the Contract provides otherwise. We do not accept any terms or conditions, which deviate from these Conditions, except if such terms and conditions have been expressly accepted by us in writing. We hereby expressly object to any terms and conditions generally used by the Supplier or included or referenced in the Supplier's order confirmation. Acceptance of order confirmations or Deliverables shall not constitute acceptance of such terms and conditions, even in the absence of an express objection.

§ 2 Orders

All orders and/or delivery calls based on framework orders and/or any amendment or addition thereto shall be valid only if issued in writing. All agreements, undertakings or declarations of any kind shall be valid only if confirmed in writing. Communication by telefax or e-mail shall be sufficient for compliance with any requirement of written form. The Supplier shall confirm our orders by returning a countersigned copy of the order or otherwise confirming such order in writing; such confirmation shall be received by us at the latest on the third day from the date of order.

§ 3 Delivery Dates and Delivery Periods, Acceptance

All services or Deliverables shall be provided on the date or within the deadline specified in the order. Supplier shall promptly notify in writing the respective ordering department of EOS when it becomes aware of circumstances, which will or may prevent it from complying with agreed delivery dates. If the parties later agree to amendments or additions of an order, these shall not affect agreed delivery dates, unless expressly agreed otherwise in writing. Premature deliveries or partial deliveries shall be admissible only with our prior consent. Where a Deliverable requires acceptance under the Contract or applicable law, such acceptance shall take place only after all services and Deliverables have been provided in accordance with the Contract (final acceptance). If the Supplier provides versions or parts of the Deliverables prior to final acceptance and EOS reviews, approves or uses them, this shall not constitute partial acceptance and shall not affect EOS' remedies for defects. Acceptance tests shall be conducted without undue delay after full delivery of the Deliverable. EOS will notify the Supplier of the date and time of the acceptance testing with one week's notice. The Supplier shall at its own cost arrange for the presence at the acceptance testing of its personnel, which was primarily responsible for the development. EOS will declare acceptance of the Deliverable in writing, if it meets all agreed specifications.

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§ 4 Prices and Payment

Unless expressly otherwise agreed, the prices quoted in any order are fixed prices and agreed on an Delivered-At-Place basis (DAP, Incoterms 2010) for delivery at our factory or office having issued the order. Further, such prices shall be deemed to include packaging. Prices shall not be deemed to include VAT. All invoices shall quote our order and article number and shall be presented promptly after delivery of the Deliverables. VAT shall be shown separately. Unless expressly otherwise agreed, payment will be made within fourteen days subject to a 3 % prepayment discount or within 30 days without discount, in each case calculated from receipt of the invoice and complete delivery, and, where required, acceptance, of the Deliverable. All payments shall be deemed made subject to the reservation of further review of the invoice.

§ 5 Defects

All deliveries are taken subject to the reservation of later inspection with respect to the absence of defects and the correctness and completeness of delivery. The Supplier will be notified of defects in writing as soon as they are detected reasonably within the ordinary course of business. In any event, we shall have at least two weeks time for such notice. In this respect the Supplier waives the defense of delayed notice. The Supplier is obligated to implement a quality control program in its production procedure and to subject all Deliverables to an outgoing goods inspection with respect to defects of material or workmanship, technical defects or other non-compliances, and shall therefore inspect all deliveries comprehensively as to their quality. The Supplier shall be liable for defects in accordance with statutory law. The warranty period shall be no less than 36 months from delivery, or, where acceptance is required, acceptance, unless a different warranty period has been expressly agreed or applies under mandatory statutory law. We may avail ourselves of all statutory remedies. In any event, we are entitled to demand, at our option, either repair of the Deliverable or delivery of a new Deliverable. Where it is not reasonably possible to allow the Supplier to repair or replace the Deliverable in view of a particular urgency, we may repair or replace such Deliverable and invoice the cost to the Supplier to the extent that the costs are not out of proportion as provided in Sec. 439 of the German Civil Code. All claims for damages, in particular damages in lieu of performance, are expressly reserved.

§ 6 No Retention of Title

We do not accept any retention of title by the Supplier or any third party. We shall obtain title to all Deliverables at the latest upon delivery to EOS or to EOS' customer.

§ 7 Liability, Product Liability, Third Party Rights

EOS shall be liable in damages, whether based on contract or any other legal theory, only to the extent that the damage was caused by gross negligence or willful misconduct imputable to EOS. In the event of death of a natural person or personal injury to the latter, EOS shall be liable also for slight negligence in accordance with statutory law. In addition, EOS shall also be liable in accordance with statutory law for a slightly negligent violation of a Fundamental Duty under the Contract, but such liability shall be limited to such damages as EOS could have reasonably foreseen at the time of signing of the Contract. "Fundamental Duties" as used herein comprise all duties, which must be fulfilled by EOS in order to enable consummation of the Contract and the achievement of its purposes and fulfillment of which the Supplier may reasonably expect in view of the content and purposes of the Contract. Limitations on our liability agreed in the Contract or in these Conditions shall apply also to the personal liability of our officers, employees or agents. Any mandatory liability under the Product Liability Act and/or arising from a guarantee of properties shall remain unaffected. The Supplier shall hold us harmless of any product liability claims which are asserted claiming that a Deliverable provided by the Supplier has been defective. Where the cause for the damage is within the Supplier's sphere of responsibility, it shall be presumed that the Deliverable was defective, unless the Supplier can establish that it was not. Where the Supplier is obligated to hold us harmless, it shall also bear all costs and expenses, including the costs of legal defense. Where the Supplier is liable to us in damages, it shall also bear all costs and expenses in connection with a product recall which may become necessary in accordance with Sec. 683, 670 and 830, 840, 426 of the German Civil Code. We will notify the Supplier prior to any product recall which is based in full or part on a defect of a Deliverable in order to consult on the most efficient implementation, unless such notification and consultation of the Supplier is not reasonably possible due to particular urgency. The Supplier shall hold us harmless of any third party liability alleging an infringement of third party rights such as patents, copyrights or trademarks, to the extent that the Supplier or its agents have caused such liability negligently or willfully. The burden of proof for the absence of negligence shall be on the Supplier. Each party will promptly notify the respective other party in the event that allegations of third party right infringement are made. The Supplier's obligations under this § 7 to hold EOS harmless shall not apply if and to the extent that the cause of such liability is imputable to EOS in accordance with this § 7. Where such cause is imputable to both parties, the Supplier shall hold EOS harmless proportionately.

§ 8 Specifications of Deliverables, Consummation of the Contract, Amendments

All Deliverables must comply with all applicable laws, regulations and standards. They shall also apply with the newest generally accepted rules of technology and science applicable as of the date of the passing of risk and all applicable standards (DEN, VDE, EN, CE) and regulations, even if this is not expressly required by the Contract. The Supplier shall further consummate the Contract in such a way that all regulations and standards for the protection of the environment, the prevention of accidents and/or safety at work (including standards published by the mutual insurance associations) and all generally accepted industrial safety and industrial medicine standards are complied with. Upon request, the Supplier shall submit at its own cost documentation on compliance with the aforementioned rules and regulations. The Supplier shall be obligated to acquaint itself with all requirements of EOS with respect to the application and/or use of the Deliverables, in particular the respective technical environment and complementary supplies or services of other suppliers and shall be responsible that all Deliverables are suitable for the agreed application or use or any other intended application or use of which the Supplier is aware. To the extent necessary, the Supplier shall be obligated to propose amendments to the prescribed or agreed specifications to EOS for this purpose. Upon request the Supplier shall provide without additional consideration to a third party nominated by us inspection samples of the materials or instruments used. The Supplier shall bear the costs of such inspection if the result of such inspection is that the materials or instruments used do not comply with the conditions of the Contract. EOS preserves any additional claims in damages in this respect. To the extent that the Contract provides for the delivery, development or customization of software, the Supplier shall also be obligated to provide a complete documentation in German and English language. EOS may freely copy and disseminate this. To the extent that the Contract provides for the development and customization of software on behalf of EOS, the Supplier shall be obligated, unless expressly otherwise agreed in the Contract, to provide, in addition to the object code of the software and the documentation, also the source code of the software in the sophisticated programming language agreed in the specification. Where no such

language has been agreed, a well established programming language shall be used. To the extent that the Supplier is not obligated to provide the source code, EOS may at any time demand that the source code is put into escrow with an established escrow institution to be released to EOS in the event of the Supplier's insolvency or the Supplier's failure to properly consummate contractual obligations. The cost shall be borne by EOS. EOS may at any time demand amendments to agreed specifications. Where EOS demands such an amendment, the Supplier shall notify EOS within two weeks, (a) whether the amendment is feasible, (b) whether the amendment would require an amendment of the Contract, in particular the specifications and/or the timetable and (c) how long the Supplier would require for preparing a specific quotation for the amendment and (d) the cost the Supplier would invoice to EOS for the provision of the quotation.

§ 9 Packaging, Waste, Hazardous and other Regulated Substances

Unless expressly otherwise agreed, the Supplier shall be responsible, at its own cost, for adequate transportation packaging of all Deliverables. Deliverables which are hazardous substances within the scope of the German Chemicals Act shall generally be accompanied by safety data sheets in accordance with Directive EEC/91/155 and packaged in accordance with United Nations regulations. Whenever relevant data are revised, the Supplier shall promptly provide an updated version.

§ 10 Work Results

All right and title worldwide, including any right of use or exploitation, in or to any modifications, alterations or derivative works of any information, data, works or materials provided by EOS, even if discovered, developed or created by or for the Supplier shall exclusively be owned by EOS. The Supplier hereby transfers such right and title to EOS who accepts such transfer. For the avoidance of doubt, EOS' right or title shall not extend to the any improvements independently developed by Supplier to the extent that such improvements are separable, i.e. can be exploited without infringing upon EOS' rights in the respective data, information, works or materials. Where an assignment is legally not possible, the Supplier guarantees that EOS will receive a fully paid, exclusive, perpetual, worldwide, transferable and sub-licensable license for all methods of use. The Supplier hereby grants such license to EOS who accepts such license. EOS shall also receive exclusive rights in accordance with the preceding paragraph with respect to all results of development work funded by EOS, provided that EOS' rights in and to works or inventions embedded in such results, which have not specifically been developed for EOS ("Standard Product(s)") shall be limited to the non-exclusive right to use and exploit such Standard Product to the extent necessary or useful for the use or exploitation of the result, provided that a Supplier has disclosed use of the Standard Product, and EOS has consented to such use, in writing in advance. In such case the Supplier shall remain entitled to use and exploit the Standard Product (but not any property of EOS embedded therein). Where a Standard Product has been embedded in a result without EOS' consent, such limitation shall not apply and EOS shall have exclusive rights with respect to the complete result. Further, EOS shall receive exclusive rights in accordance with the preceding paragraphs also in and to all other results of the parties' cooperation in connection with the Contract except if and to the extent expressly otherwise agreed. The Supplier hereby grants all of the rights set forth hereinabove to EOS who accepts such grant. In any event, EOS reserves all right and title to any data, information, works or materials it may provide to Supplier and to any of its confidential information. Where such data, information, works and/or materials have been provided by third parties, such reservation shall also apply for the benefit of such third party. Products, which have been developed based on drawings or other materials provided by EOS or EOS' confidential information may not be used by the Supplier except for consummation of the Contract and may not be offered or made available to third parties.

§ 11 Confidentiality, Data Protection

The parties mutually agree to keep all confidential technical or commercial information received from the respective other party strictly confidential and to refrain from using any such confidential information except as strictly required to perform the Contract. Only information which the recipient can show was already published or known to it at the time of disclosure or that was published later without the fault of the recipient, shall be exempted from this clause. The parties guarantee that their respective employees, consultants and subcontractors are bound by, and shall comply with, a secrecy obligation corresponding to or exceeding the standards set by this clause, which secrecy obligation shall remain in force even after the end of the relationship between the party concerned and its employees, consultants and subcontractors. The recipient shall notify the respective other party in the event that it becomes aware that information which the respective other party regards as confidential has become publicly known, or if notes or media containing such confidential information are lost, or if it deems itself legally obligated to provide such confidential information to any third party, including courts of law or government entities. This confidentiality clause shall remain in force even after termination of the Contract.

The Supplier may publish its business relationship with EOS in its marketing materials only with EOS' prior written consent.

The Supplier shall preserve the confidentiality of personal data in accordance with Sec. 5 of the German Data Protection Act and shall only employ agents of subcontractors who have been obligated to preserve the confidentiality of personal data and confidentiality obligations in accordance with this § 11 for an unlimited period of time.

§ 12 No Assignment, Subcontractors

The Supplier shall not be entitled to assign its rights under the Contract – except for claims for payment – to any third party without our prior written consent, which consent shall not be unreasonably withheld. The Supplier may not make use of any subcontractors to perform any of its obligations under the Contract or these Conditions except with our prior written consent. Such consent shall not limit or restrict the Supplier's obligations towards EOS under the Contract.

§ 13 Export Control and Customs

The Supplier shall notify EOS in its business documents of any obligations to obtain permits or any other limitations with respect to the export or re-export of Deliverables under German, European or US export or customs regulations and/or the export or customs regulations applicable in the country of origin of the Deliverable. For this purpose, the Supplier shall as a minimum provide the following information in its quotations, order confirmations, shipping notes and invoices with respect to each item:

- the export list number in accordance with Schedule AL to the German Export Regulation or similar list numbers of similar export lists,
- for US goods the ECCN (Export Control Classification Number) or respectively basket number EAQ 99 in accordance with the US Export Administration Regulations (EAR),
- the legal preferential and non-preferential origin of goods with respect to its goods and their respective parts including technology and software,
- whether or not goods have been transported through the US, manufactured or stored in the USA or manufactured using US technology,
- the statistical product number (HS-Code) of goods, and a contact person in its business for questions we may have in this respect. Upon request, the Supplier shall provide any other export related data with respect to its goods and their parts in writing. The Supplier shall further be obligated to notify us promptly (prior to delivery of affected goods) of any amendments of the aforementioned data in writing.

§ 14 No Set-off, Place of Performance, Venue and Applicable Law, Severability

The Supplier shall not be entitled to set off any of its claims against our claims, except where the Supplier's claims are undisputed or have been confirmed by a final court judgment. The same shall apply to any right of retention under civil or commercial law.

Place of performance for all rights and obligations under the Contract shall, unless otherwise agreed in the order, be at our corporate domicile.

All disputes arising under and in connection with a Contract and/or these Conditions shall be submitted exclusively to the courts of Munich, Germany. The Supplier hereby submits expressly to the jurisdiction of the Munich courts. EOS shall in any event be entitled, at its discretion, alternatively to take legal action against the Supplier in the courts having general personal jurisdiction of the Supplier.

The Contract and these Conditions shall be subject to the laws of the Federal Republic of Germany with the exception of the UN Sales Convention (CSG).

Should one or more of the provisions of the Contract or these Conditions be or become valid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected.

§ 15 Languages#

Unless expressly otherwise agreed, only the German version of these Conditions shall be legally binding and part of the Contract. Any translations in a different language which EOS may provide, including these English language Conditions, are provided for information purposes only and do not replace the German version.

Krailling, 10/2010