

Contract Conditions Sales (CCS) ASP Equipment GmbH (ASP) 02/2010

To the extent legally possible, the following contract conditions for sales activities (hereinafter "CCS") shall form an integral part of any underlying contract or order (hereinafter "Contract") between ASP Equipment GmbH (hereinafter "ASP") and its customer. The Parties explicitly declare to have read, understood and negotiated in good faith these CCS before contract signature.

Article 1: Contractual Baseline

1.1 Unless expressly otherwise confirmed by ASP in writing, the Contract consists of the following documents which are listed in their order of precedence, to be followed in the event of any conflict, misinterpretation or inconsistency between their terms:

1. the Contract and its Annexes
2. ASP proposal and its Annexes
3. these CCS.

1.2 In case of lacking provisions or any doubt thereof, these CCS shall prevail. Any differing or additional terms and conditions of the customer or made applicable by the customer shall be excluded, even if they may appear in other documents as the Contract itself or in case that ASP undertakes the performance or delivery without reservation even though being aware of any such terms.

1.3 Notwithstanding any proposal validity or any other ASP commitment, such ASP proposals or commitments shall become legally valid when the subsequent Contract or ASP obligation is countersigned by ASP's general managing director or any other person expressly authorised by him towards the customer.

Article 2: Delivery, Acceptance

2.1 Deliveries or services shall be affected pursuant to the applicable statement of work, specifications or any other requirements and pursuant to the milestone dates as defined in ASP's proposal and/or its annexes thereto. In case of any conflict, misinterpretation or lack of any such requirements, ASP shall perform such work on a state-of-the-art basis, however utilising proper ASP knowledge and experience and endeavouring the best possible result within the frame of the agreed price. Functionality and, if applicable, interface requirements are prevailed by the technical specifications. In case of any services to be rendered at the customer's premises or at premises prescribed by the customer, costs for travelling to and back from such working location and/or stand-by periods of ASP personnel and/or of its sub-suppliers caused by reasons beyond ASP's/sub-supplier's control shall be reimbursed by applying ASP's/sub-suppliers' hourly rates, apart from any other additional expenses to be paid, such as but not limited to extra travelling expenses.

2.2 ASP deliveries are made EXW Incoterms 2000. Upon request, ASP supports, at ASP's discretion, the customer's transport, the customer assuming any responsibility, risk, insurance and costs of such transport carried out by ASP on the customer's behalf.

2.3 The delivery/performance dates or any other milestones defined shall start, if applicable, with ASP's receipt of the letter of credit or the receipt of the advance payment. The dates shall be adapted correspondingly in case of any delayed receipt.

The dates are based on the customer's timely provision and/or delivery on DDU (Incoterms 2000) basis of customer or higher tier customer furnished items in the conditions agreed or otherwise prescribed, such as equipment, models, devices, jigs and tools, facilities, documents, know-how, information, services, assistance, releases, agreement upon technical requirements, governmental authorisations, etc. as far as applicable (hereinafter "CFI"), which is considered by both parties as essential part for the Contract. In case of non-fulfilment of said obligations, the ASP delivery/performance dates shall be reasonably extended and/or any other provision shall be amended correspondingly. ASP reserves the right to terminate the Contract for cause, compensation of damages and/or reimbursement of futile expenses after expiration of a reasonable period of CFI delay. ASP returns the CFI according art. 2.2.

2.4 Delays in delivery or any other performance milestones, resulting from but not limited to acts of God, natural catastrophes including fire and flood, strikes, legal lock-outs, material and/or power shortage, delayed supplies of ASP without ASP's fault, governmental actions and authorisations or any other events, which in every case are beyond the reasonable control of ASP and/or its sub-suppliers, shall constitute a force majeure event. ASP provides written notice of the period of such delay within 10 business days. The milestones shall be extended by the length of such delay. Both parties are entitled to terminate the Contract in writing in case of a force majeure event lasting consecutively 6 months or more, ASP being reimbursed by work performed, deliveries made and costs reasonably incurred up to the date of termination.

2.5 Acceptance of the deliverables or services shall be declared within 2 weeks after ASP's delivery. Defects shall be remedied by ASP as soon as possible, however minor defects not endangering the performance or the use of the deliverable shall not entitle to refuse acceptance in total. In case of the absence of any substantially justified rejection expressing the respective reasons, acceptance shall be deemed to be declared after said period. In case of any doubt, related payment shall be construed as declaration of acceptance. ASP reserves all right in case of the customer's default of acceptance.

2.6 In case of any late delivery caused by ASP, the customer is entitled to claim liquidated damages amounting to 0,5% of the portion of the total price equal to ASP's deliverable item delayed per each entire week up to a maximum of 5% of the respective price portion, unless the customer sustained less or no damages.

Article 3: Payment, Price

3.1 Payment shall be made via bank transfer to the ASP bank account indicated on ASP's invoice in accordance with the payment milestones and without any deduction. All payments shall be effected in EURO within 30 days after the receipt of an appropriate ASP invoice and the fulfilment of the respective milestone. The prices do not include any Value Added Tax (VAT). All other taxes, levies, duties, charges and fees outside the Federal Republic of Germany shall be borne by the customer.

3.2 The offset of any customer counterclaim is excluded, unless they are undisputed or have become legally binding.

3.3 In the event of any significant financial difficulties of the customer endangering or most likely endangering the fulfilment of its payment obligations in due time, ASP is entitled to refuse performance or delivery and to stop work until such conditions have disappeared and/or the customer or a third person acceptable to ASP has provided an appropriate financial guarantee according to art. 3.4 below. The same applies in case of any unjustified withholding of due payments. Notwithstanding the above, ASP's right to claim interests or damage compensation and the right to terminate the Contract for cause shall remain unaffected.

3.4 If referenced in the proposal, all payments shall be effected and secured by an irrevocable, transferable and divisible letter of credit payable at sight and issued by a first class German bank amounting to the total price of the Contract in favour of and free of charge to ASP within 30 days after Contract signature. The letter of credit amounts shall be payable upon ASP's presentation of appropriate documents justifying the fulfilment of the corresponding payment milestone or ASP claim. In case of any doubt, the latest issue of the provisions "Uniforms Customs and Practice for documentary Credits" (International Trade CCI Norms) shall apply.

3.5 All ASP prices are calculated upon the scheduled performance and delivery dates defined in the proposal. In case of any postponement, stop work order or any interruption of the work flow for more than 60 calendar days or an unforeseen shift to the next calendar year beyond ASP's control, the price and, if applicable, other contractual, technical and schedule conditions shall be reasonably adapted, in particular covering increased labour, ASP personnel stand-by, material, sub-supplier or any other additional costs.

Article 4: Warranty

4.1 The customer inspects the delivered items and services immediately after delivery or fulfilment, in order to identify any non-conforming work, informing ASP in writing about any apparent or reasonably detectable defects within a period of 2 weeks after delivery. After expiry of such period the customer is precluded from any claim concerning defects of this nature. For such defects notified to ASP and any non-apparent or non-detectable defects, the customer in any case shall require from ASP that any non-conforming work be corrected, repaired or replaced. ASP elects the remedy type at its discretion and expense within a reasonable period of time taking into account the reasonable interests of both Parties. If ASP refuses or fails two times to remedy such non-conforming work within a reasonable period after notification from the customer, then the customer may either require ASP to repay such reasonable portion of the total price as is equitable in lieu of remedying such defective work or have a third party correct, repair or replace such non-conforming work and invoice ASP for the reasonable costs incurred in so doing up to the total Contract price. Remedies or specific kinds of remedies are legally excluded if the costs for such remedies are disproportionate. Defects which do not essentially effect the agreed intended use may be remedied by a by-pass configuration provided that no functional restriction results hereof. De-integration and re-integration work and costs with respect to the defective items are excluded from the warranty. The customer is entitled for termination of the Contract and to claim damages instead of performance or for reimbursement of futile expenses in case of material defects. In case of effected partial delivery, the customer may terminate the Contract in total if he proves that the fulfilment of the residual part of the Contract objectively is of no interest for him or its higher tier customer. Any other legal warranty restrictions or exclusions remain applicable. Art. 7.1 shall be applied analogously.

The above warranties shall extend for a period of 1 year after acceptance of each individual deliverable item.

4.2

For non-conforming storage, operation, maintenance or inappropriate or excessive use of the deliverables by the customer or a third party any warranty claims are excluded. In case of any doubt, the customer consults ASP in advance.

Article 5: Transfer of Risk and Title

5.1

Risk in each deliverable item or CFI to be returned shall pass from ASP to the customer according to EXW Incoterms 2000. In case that any such deliverable is returned to ASP, risk shall revert to ASP upon ASP's receipt at its premises. In the event that delivery or transfer of risk is delayed by reasons beyond ASP's control, transfer of risk shall be deemed to have passed to the customer upon ASP's notice to the Customer of its readiness for delivery.

5.2

Title of all Contract deliverables shall pass to customer at final acceptance subsequent to delivery and full payment of the total Contract price. However, the customer is entitled to sell the deliverables to third parties or to dispose otherwise of the deliverables. The customer previously notifies ASP and hereby assigns to ASP any rights and claims arising out of such sale or disposal up to an amount as is equitable to the original value of the concerned deliverable while ASP accepts such assignment. In case of any modification, implementation or any other further processing of the deliverables, in particular but not limited to an integration into a (sub-) system or any other assembly, such processing shall be deemed to be undertaken in favour of ASP. ASP hereby acquires ownership of the new product processed at the earliest time legally possible.

Article 6: Intellectual Property, Confidentiality

6.1

ASP retains ownership of all intellectual property rights (hereinafter "IPR") including all rights in subject inventions, patents, software, data as documents, drawings or any other right in intellectual property marked as such or not. However, ASP grants to the customer and its higher tier customers of the program, for purposes of the program an irrevocable, non-exclusive and worldwide right to use any foreground IPR developed under the Contract and any background IPR for the sole purpose enabling the practice of any foreground IPR for the particular program. Rights in modification, reproduction, and/or supplementation (hereinafter "MRS") and the right to sublicense to other third parties shall stay exclusively with ASP, ASP granting fair and reasonable conditions to be agreed between the parties pursuant to art. 9. In case of ASP's unwillingness and/or incapacity to undertake such MRS, the customer is entitled to do or having done so in ASP stead on a fair and reasonable royalty basis to be fixed between the parties, ensuring that ASP is duly informed about any such MRS in advance, that the modification results are subsequently made available to ASP upon its request on a fair and reasonable basis and, if applicable, that the customer imposes on third parties the obligations to use the IPR only for the MRS purpose within the program. In case of any doubt, DIN-34/ISO16016 shall apply.

6.2

In the event of any IPR jointly made by the parties and resulting from the performance under the Contract 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.

6.3

Both parties undertake to keep any IPR, documents or information including the proposal confidential and in adequate care and not to disclose to any third party or proper personnel, such personnel having no need to receive such proprietary information, or to use otherwise such IPR towards any third party without the other party's prior written approval. The obligations under this sub-article shall continue and survive the completion of the term, termination or assignment of the Contract.

6.4

ASP declares that it has unlimited rights of disposal and that no third party rights exist with respect to IPR. ASP indemnifies and holds the customer harmless against any third party claims up to a reasonable royalty compensation to such third party not exceeding 10% of the total Contract price.

Article 7: Liability

7.1

ASP's liability (including the personal liability of its employees, representatives, agents or sub-suppliers) either by law, Contract, tort or otherwise for any damages and losses including reimbursement of expenses, in total shall not exceed 100% of the total Contract price. Any ASP liability is subject to ASP's infringement of material obligations proven by the customer. The liability for any special, incidental, indirect or consequential damages, loss or revenues including removal / installation costs shall be excluded. However, ASP's liability shall not be limited for bodily harm or death and in case of damages caused intentionally or gross negligently.

7.2

As far as legally possible, ASP's product liability in aeronautic business is limited for each damage and calendar year according to its insured coverage to 50 MioEUR for satellites/grounding, 10,0 MioEUR for removal/installation, 5 MioEUR for recalls. In other business ASP's product liability is limited for each damage

and calendar year according to its insured coverage to 25 MioEUR for damages to premises, 100 TEUR for financial loss, as far as legally possible. The customer shall, at its expense, defend ASP from and against all claims, actions or proceedings against ASP based on any allegation that ASP work or any part thereof constitutes a product liability claim. The customer therefore shall hold harmless and indemnify ASP for all damages and costs, including but not limited to costs for legal defence and associated fees, occasioned by reason thereof.

Article 8: Arbitration

8.1

Any disputes arising under this Agreement, which could not be settled amicably between the parties, shall be decided through arbitration in compliance with the rules of the International Chamber of Commerce (Paris) by three arbitrators appointed according to these rules; the court of arbitration shall convene in Friedrichshafen, Germany. Its decision shall be final and binding. Both parties shall have the right to file suit provided that no application for arbitration has been made by either party within a reasonable time.

The place of delivery, performance and/or payment is ASP's registered office.

8.2

Each party acknowledges that in the event of a breach of Contract the party's legal remedies mentioned above may be inadequate. Therefore, each party agrees that in such event the relevant party shall have the right to interim order, injunctive relief or other appropriate remedies at any competent court, subject to the German legal civil procedure provisions.

8.3

Each party shall bear its own costs and expenditures in connection with the arbitration or suit process unless the arbitral or court award stipulates something different.

Article 9: Changes

9.1

Any modification to this Agreement shall be set out in a written change notice signed by both parties.

9.2

The customer may request for any modification feasible for ASP. Should the customer exercise the right of modification, ASP shall within a reasonable time inform about the technical implementation and the effect on the completion dates, price and on any other terms of the Contract. ASP may propose within the change process to the customer any modifications such as to improve the conditions of performance of the work or the quality of the deliverables.

The parties shall negotiate in good faith and agree on all consequences of the change including price and schedule.

Article 10: Miscellaneous

10.1

The Contract shall be governed by the law of the Federal Republic of Germany with the exception of its conflict of laws provisions.

10.2

The Contract shall not constitute, give effect to, or otherwise imply, a pooling arrangement, a joint venture, partnership, agency or formal business organisation of any kind between the Parties. No Party has the authorization and shall therefore not make any commitments of any kind on or behalf of the other Party without the prior written consent of this other Party.

10.3

No party shall assign any of its rights and obligations except with the prior written consent of the other Party. ASP is allowed to subcontract parts of the work as stated vis-à-vis the customer.

10.4

ASP complies with the legal requirements of the places where ASP work is performed.

10.5

The invalidity in whole or in part of any provision of the Contract or these CCS 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 which corresponds in economic, legal and technical terms to the parties' original and reasonable intent.

10.6

The Contract including its annexes, these CCS, ASP's proposal and the changes agreed pursuant to art. 9 constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any or all prior or contemporaneous agreements or understandings of the Parties.

10.7

All correspondence, documentation, information, commitments or changes etc. of legal binding character shall be made in written form and in the English language or; in case of a German customer or if agreed in the German language. For correspondence of legal binding character, the written form shall not be replaced by electronic form (E-mail et al.).