

## General Purchasing and Ordering Conditions (GPOC) of ESG GmbH (hereinafter referred to as "ESG")

valid as from 10.05.2017

### 1 General

All orders (and supply or service call-offs under framework agreements) placed by ESG for supplies and services are exclusively based on the special conditions specified in them, and – subordinately – on these General Purchasing and Ordering Conditions. The General Terms and Conditions of the contractor (hereinafter referred to as "the Contractor") do not become an integral part of the contract even if ESG does not explicitly object to them or if the Contractor states that it only wishes to supply based on its conditions.

### 2 Order/changes

- 2.1 Supply contracts (order and acceptance) and changes and additions to them must be in written or electronically form. Acceptance of the ESG order must be notified in written or electronically form. Oral declarations or agreements must be confirmed in writing by ESG in written or electronically form.
- 2.2 If the Contractor does not accept the order within two weeks of the order date, ESG is no longer tied to the order. Supply and service call-offs only become binding if the Contractor does not object to them within one week after the date of the supply or service call-off.
- 2.3 ESG may demand changes to the design and/or execution of the services or the objects to be supplied if such demands are reasonable from the Contractor's point of view. The consequences, in particular as regards the additional and reduced costs and the supply deadlines, must be appropriately agreed and settled between the parties.
- 2.4 The Contractor must without delay notify ESG in writing of planned changes relating to the composition of the material that is processed, and changes in design or method of execution compared to services or supplies of the same type previously provided for ESG. The changes must be agreed to in writing by ESG.
- 2.5 The Contractor must ensure that the supplies and services comply with the environmental protection, accident prevention and other occupational health and safety regulations and with other safety rules and all the legal requirements which are applicable in the Federal Republic of Germany and the European Community and at the place of performance, and it must notify ESG of any special handling and disposal requirements for each supply or service which are not common knowledge, and for every good supplied it must provide a manufacturer's declaration or a declaration of conformity (CE) according to the corresponding European Union guidelines or other legal provisions.

### 3 Provision of materials / development results

- 3.1 Materials and objects of any kind supplied by ESG remain the exclusive property of ESG. If the materials and objects provided for the Contractor are processed or transformed into a new item of moveable property by the Contractor, ESG is deemed to be the sole manufacturer within the meaning of § 950 of the BGB [German Civil Code]. In the event of the combining or the indissoluble mixing of the materials and objects provided by ESG with other materials and objects, ESG acquires joint ownership of the newly created property in proportion to the value of the objects at the time when they were combined or mixed. If the combining or mixing is carried out in such a way that the Contractor's objects are considered to comprise the main object, it is agreed that the Contractor transfers joint ownership to ESG on a proportional basis; the Contractor holds the jointly owned property in its safekeeping for ESG. If objects are developed or manufactured by the Contractor with substantial assistance from ESG (testing etc.), or if they are manufactured by the Contractor according to information provided by ESG or are paid for in full by ESG, they may only be used for the purposes of the order; if such objects are the property of ESG, they must be returned to ESG, "carriage and insurance paid to ESG's Fürstenfeldbruck plant" without delay upon demand. The Contractor bears the transportation risk, and the risk of loss or damage in respect of provided materials and objects.
- 3.2 The Contractor is obliged to carry out at its own expense any maintenance or inspection works that may be required in relation to objects provided by ESG, and – particularly in the case of transportation from and to third parties – to insure them adequately and to provide evidence of this to us upon demand.

### 4 Secrecy

- 4.1 The Contractor and ESG undertake to treat as a business secret all the commercial and technical details which are not obvious and

which they become aware of in the context of their business relationships.

- 4.2 Technical documents, drawings, models, stencils, patterns and other similar objects must not be given or lent to third parties or otherwise made available to them. The reproduction of such objects is only permitted insofar as it is necessitated by operational requirements and in accordance with the provisions of copyright law.

### 5 Sub-contracts

The awarding of subcontracts requires ESG's prior written agreement; the subcontractors must be pledged to secrecy in accordance with the provisions set out in Clause 4.

### 6 Supply deadlines / shipping / pricing

- 6.1 The timeliness of deliveries not involving installation or set-up is determined by the time when they are received at the delivery location specified by ESG. The timeliness of deliveries involving set-up or installation, and of services, is determined by the time when they are provided ready for acceptance to be carried out. ESG's acceptance of delayed supply or service ESG does not entail any waiving of compensation claims.
- 6.2 The deadlines specified in the order for supplies and services provided by the Contractor may be extended for up to 4 months by ESG if ESG's anticipated need for them is delayed by other kinds of work backlogs or operational problems. ESG must inform the Contractor of the circumstances causing the change of supply or service deadlines in good time. The Contractor is obliged to provide its service/supply according to the amended supply and/or service deadlines within the period specified above.
- 6.3 The Contractor must package, ship and insure its supplies properly and comply with all the relevant packaging and shipping rules and regulations in order to do so. The Contractor is liable for any losses suffered by ESG as a result of the incorrect or inadequate packaging, shipping or insurance.
- 6.4 All the relevant accompanying documents such as delivery notes, certificates, invoices etc. must be affixed to the outside of the consignment in a dispatch envelope. The delivery note must state the order number, ESG's purchaser and delivery note number, as well as the delivery note date, dispatch date, type of packaging, designation of the goods, the quantity and weight of the consignment, and the recipient's address (unloading location and plant).
- 6.5 The place of performance for supplies and services provided by the Contractor is the delivery location stated in the order. If no delivery location is stated and it is also not evident from the nature of the contractual obligation, ESG's corporate headquarters is deemed to be the place of performance.

### 7 Delayed delivery / force majeure

- 7.1 If the Contractor is late in providing supplies or services, then – irrespective of the legal claims – ESG is entitled to demand from the Contractor a contractual penalty of 0.5% of the order value for the parts that have not been supplied on time, or of the order value of the services that have not been provided on time, for each week or part thereof, subject to a maximum of 5% of this order value. ESG may also demand the contractual penalty if ESG reserves the right to do so until no later than the expiry of a period of one month following acceptance of the last supplies or services to be provided according to the order. The right is reserved to make further claims and to assert further rights.
- 7.2 Cases of force majeure release the contracting parties from their performance obligations for the duration of the disruption and to the extent of their impact. This also applies if these events occur at a time when the contracting party concerned is in default. Insofar as they can reasonably be expected to do so, the contracting parties are obliged to provide the necessary information without delay, and, acting in good faith, to adjust their obligations to take account of the changed circumstances. If owing to an instance of force majeure the Contractor is prevented from undertaking performance for longer than one month, each side may completely or partly rescind the contract.

### 8 Acceptance

- 8.1 Once an order or parts of an order is/are completed in accordance with the contract, ESG will carry out the acceptance procedures. Acceptance will be carried out as specified by the end customer by an authorised representative of ESG together with an authorised representative of the Contractor. The anticipated termination of the contract or of the order section must be notified to ESG in good time.

- 8.2 A record of the acceptance process must be drawn up. Any faults or errors that are ascertained must be itemised in the record. ESG retains its rights in relation to any other defects, even without explicit reference to them.
- 8.3 Any previous quality testing (e.g. according to § 12 VOL/B [General Contractual Conditions for the Performance of Services]) or any partial acceptance of partial services – if agreed – does not replace the full acceptance procedure. The warranty period starts once full acceptance has been carried out in relation to the service.
- 8.4 If the supplies or services provided do not conform to the subject matter of the contract, or if they are substantially defective, ESG may withhold acceptance. The Contractor is obliged to carry out rectification at its own expense if requested to do so by ESG.

## 9 Invoice and payment, prohibition of assignment

- 9.1 Invoices are provided, and for each supply and service the invoice must state the ESG order number and item number as well as the dispatch date, the designation of the goods, the quantity and weight of the consignment, and the Value Added Tax identification number in the case of cross-border supplies and services within the European Union. It must be sent separately by post or electronically.
- 9.2 Subject to any differing provision set out in the order, payment is made by transfer or cheque, but not under any circumstances by cash on delivery. If a cheque is posted by the payment deadline, the deadline is met. Treatment for Value Added Tax purposes and any other tax obligations are governed by the respective applicable tax laws.
- 9.3 Unless otherwise specified in the order, payment falls due 60 days after supply and/or service performance according to the contract and receipt of the invoice. If it pays within 14 days after supply and/or service performance according to the contract and receipt of the invoice, ESG is entitled to deduct 3% prompt payment discount from the invoice amount, and to deduct 2% prompt payment discount from the invoice amount if it pays within 30 days after supply and/or service performance according to the contract and receipt of the invoice. The deducting of a prompt payment discount is also permitted if ESG offsets payments or withholds reasonable payment amounts due to defects; the period allowed for payment commences once the defects have been fully rectified. Payments by ESG do not signify any acknowledgement that the supplies and/or services are in accordance with the contract. Invoices which contain partial quantities and / or partial services which have been supplied/provided early only become due for payment when the item with the latest date becomes due, and only following the supply/provision of all the supplies and/or services without any defects according to the payment terms. Any agreed early payment discounts are also deducted from the total invoice amount in the case of the provision of partial supplies/services.
- 9.4 The Contractor is not entitled to assign its accounts receivables due from ESG, or to have them collected by third parties, without having prior written agreement, which must not be unreasonably withheld. Such agreement is deemed to be given in the case of extended reservations of title and assignments to companies in which ESG has a direct or indirect holding of more than 50%.
- 9.5 If contrary to sentence 1 the Contractor assigns its accounts receivables due from ESG to a third party without ESG's agreement, the assignment is nevertheless effective. ESG may however choose to pay either the Contractor or the third party, validly discharging the debt in each case.

## 10 Quality management

The Contractor must undertake appropriate quality management, and monitoring, and it must also comply with any quality rules that are specified in the order. The undertaking of appropriate quality testing and goods inwards checks by ESG does not exempt the Contractor from its contractual duties.

## 11 Material defects and defective title

- 11.1 The Contractor shall ensure that its supplies and services remain free of any material defects or defects in title for a period of two years as from the transfer of risk. In the event of resale, the limitation period in respect of defect claims is two years after the transfer of risk to the end customer; however it ends no later than 36 months after the transfer of risk from the Contractor to ESG. If longer limitation periods are prescribed by law, for example in the case of built structures or property supplied for built structures, those periods apply. The limitation period ceases to run during periods in which the service cannot be used owing to defects. The suspension of the limitation period begins on the date when the defect is notified to the Contractor, and it ends on the date of full contractual performance. The limitation period ceases at the earliest three months after the end of the suspension.
- 11.2 The supplies and services must in particular be provided using the most suitable material which is free of defects, and they must com-

ply with any legal/official regulations and be state-of-the-art in scientific and technological terms at the time when the contract is performed, even if this standard has not been incorporated into the relevant technical standards and regulations for the services provided by the Contractor at the place of performance.

- 11.3 ESG will check delivered supplies for material defects within a reasonable period. A complaint is made in a timely manner if it is made to the Contractor within two weeks following the discovery of the material defect. The timeliness of the complaint is determined by the point in time when it is sent.
- 11.4 In the event of material defects and defects in title, ESG has all the legal claims and rights fully at its disposal. The Contractor shall in particular pay for all the expenses that are entailed in connection with the ascertaining and rectifying of defects, even if they are incurred by ESG, in particular investigation costs, costs incurred by ESG prior to the discovery of the defect, removal and installation costs, costs of labour and materials, and the transportation and other costs for delivering defective parts and returning defect-free parts. This also applies if the expenditure is increased due to the object that is supplied being taken to a location other than the place of performance.
- 11.5 If the subsequent performance (rectification or substitute supply) is delayed or fails or is refused, ESG also has the right to undertake substitute performance itself at the Contractor's expense, irrespective of the legal entitlements. Rectification is deemed to have failed after two unsuccessful attempts. Regardless of this, in urgent cases once it has informed the Contractor ESG has the right to undertake substitute performance itself in return for reimbursement of the costs which the Contractor avoids as a result.

## 12 Usage rights

- 12.1 ESG possesses the exclusive rights to all the services provided by the Contractor, in particular results, findings, patterns, models, know-how, inventions, results protected by copyright, protected and unprotected computer programs including source programs and source code as well as documentation, reports, papers, suggestions, ideas, sketches, designs, proposals etc. (hereinafter summarised as "work results").
- 12.2 ESG acquires an exclusive, free of charge, irrevocable and transferable right to use all the copyrightable work results that have been produced; this right is of unlimited duration and geographical scope and without restriction in terms of content, and it applies to any kind of use, whether or not the originator is designated, and without the originator's specific consent being required. This applies particularly to computer programs that are copyright-protected. The Contractor must provide these computer programs to ESG in the object code and source program / source code on data media in machine-readable form, together with the relevant documentation. In particular, ESG has the right to use them or to edit, rework, reproduce, publish or disseminate them, including the actions referred to in § 69 c of the UrhG [German Copyright Law], and to reuse them in internal and external print, audiovisual and electronic media and database systems as well as on electronic data media, and to translate them and disseminate them outside of German-speaking countries. ESG is entitled to use the documents as it chooses and to reproduce, disseminate, edit and rework them, including through the use of all known technical means.
- 12.3 If the work results are copyrightable, ESG is entitled to register copyrights in Germany and abroad in its own name and at its own expense, and to maintain/assert them, and also to let them lapse at any time. The Contractor will inform ESG of copyrightable work results without delay, and provide it with all the necessary information. If this is demanded by ESG, the Contractor must serve a notice on the inventor claiming full copyright to copyrightable work results that are created by its employees in the course of carrying out the order, and it must transfer the copyright to ESG without delay. ESG must notify this demand in good time to enable the time limits in the Arbeitnehmererfindungsgesetz [Employee Inventions Act] to be met by the Contractor. If ESG does not wish to submit a copyright application in respect of a work result, the Contractor is entitled to make the application in its own name and at its own expense, in which case ESG nevertheless retains a simple, free of charge right of use of unlimited geographical scope and duration which is unrestricted in terms of content, is able to be sub-licensed, and applies to any kind of use of the copyrightable work results.
- 12.4 If any of the Contractor's existing industrial property rights, copyright or unprotected knowledge (know-how) is or are used in connection with the performance of the contract (hereinafter referred to as "non-contractual results"), and if they are necessary for the use of the work results by ESG, this must be disclosed to ESG without delay. The Contractor grants ESG a simple right to use these non-contractual results which is free of charge and of unlimited geographical scope and duration which is unrestricted in terms of content and is able to be sub-licensed insofar as their use is of practical benefit and necessary in relation to the use of the work results.

12.5 The above assignments of rights are paid for in full through the remuneration that is specified for the Contractor in this order.

### 13 Insurances

The Contractor is obliged to take out an appropriate public and products liability insurance, and on demand to provide evidence to ESG that it has done so. The Contractor shall on demand assign its claims against its insurer to ESG.

### 14 Third party copyright

14.1 The Contractor is obliged to provide the services free of any third party industrial property rights and/or third party industrial property right applications or third party copyright (hereinafter summarised as "industrial property rights") or other third party rights. The Contractor is liable for all claims which arise from the infringing of third party copyright or from the violation of any other third party rights. It accordingly holds ESG harmless in respect of all third party claims.

14.2 If in the course of performance it emerges that the use of third party copyright is necessary for the successful provision of the services, the Contractor will inform ESG of this without delay. ESG will decide whether to seek a licence, or whether the works will be continued in a form which avoids any infringement of such rights.

14.3 The limitation period for these claims is 10 years after the end of the contract.

### 15 Right of withdrawal /notice of cancellation

If a contracting party's financial and credit situation deteriorates to such an extent that the proper fulfilling of the contractual duties is significantly jeopardised, in particular if insolvency proceedings have been applied for in respect of its assets, the other party is entitled to withdraw from the contract in relation to the part of it that has not been performed, or to give notice to cancel it.

### 16 Stockpiling of parts / supply readiness

The Contractor must ensure that parts are stockpiled / ready to be supplied for the normal service life of its supplies and services, but at least for a period of ten years following contractual performance. Even when such a stockpiling obligation no longer exists in respect of the services provided for ESG, the Contractor must give ESG sufficient notice of its intention to end the stockpiling/ readiness for supply to enable enough parts to then be supplied to ESG so that it can undertake its own stockpiling.

### 17 Product liability

The Contractor undertakes to check its supplies for defects meticulously and to do all that is necessary to avoid a product liability claim occurring. If a claim is made against ESG by a third party owing to the defectiveness of one of the Contractor's products, and if the defectiveness is wholly or partly due to a defect in the goods or services supplied by the Contractor, ESG may demand that the Contractor hold it harmless in relation to the third party instead of compensating it for any losses. The Contractor's obligation to provide compensation also includes the costs of any necessary precautionary recall operation undertaken to prevent losses.

### 18 Environmental management, hazardous substances

18.1 The Contractor is obliged to comply at its own expense with the applicable legal provisions, in particular the safety and environmental regulations including the Verordnung über gefährliche Stoffe [Hazardous Substances Ordinance] and the Elektro- und Elektronikgerätegesetz [Electrical and Electronic Devices Act].

18.2 The Contractor undertakes to comply at all times with all the requirements of Regulation (EU) No. 1907/2006 of 18 December 2006 concerning the use and handling of chemicals (so-called REACH regulations). It will in particular fulfil its duties under Art. 31 to 33 of the regulations and it will also without delay – and without explicitly being asked to do so by ESG – provide all the information which is required by ESG in relation to this contract owing to the REACH regulations and which is relevant to the contractually-compliant use of products that are to be supplied by the Contractor. Any Contractor which has its headquarters outside the EU undertakes to fulfil the duties that are imposed on it as an importer by the REACH regulations. These duties of the Contractor are material contractual obligations (so-called "cardinal duties"), the fulfilment of which is indispensable to the performance of the contract. If the Contractor fails to fulfil its duties in this regard, or fails to do so adequately or in time, the Contractor will hold ESG harmless in respect of all claims for damages made against it due to the Contractor's liability for the failure to fulfil these duties.

18.3 An up-to-date version in German and English of the safety data sheet specified in Regulation (EC) No. 1907/2006 ("REACH regulations") and Directive 67/548/EEC ("substances directive") must be enclosed with every supply consignment.

18.4 The Contractor assumes responsibility for the duty to accept returned goods and dispose of them according to § 10 sec. 2 of the

Elektro- und Elektronikgerätegesetz [Electrical and Electronic Devices Act], and it will bear any expenses incurred in this connection.

### 19 Export

19.1 The Contractor is obliged to comply with the relevant export and customs regulations and – if necessary – to obtain the corresponding approvals in good time. The Contractor undertakes to inform ESG of all the applicable export and re-export restrictions and regulations at the latest when delivery is made, and to advise ESG of the relevant export control numbers according to the export lists of the USA, the EU or other countries. In addition, once this contract has been concluded or any order placed under it has been confirmed the Contractor undertakes to inform ESG without delay of all the documents that are required by ESG, such as an end-user certificate.

19.2 The Contractor undertakes to ensure by taking suitable measures that European, US and other applicable anti-terror regulations and official blacklists of any relevant country are adhered to. In addition, the Contractor guarantees that its employees, subcontractors and other business partners do not include any companies, businesses or people who are on a black list issued by the USA, the EU, Germany or a government of other responsible countries.

19.3 The Contractor undertakes to provide to ESG – at the latest upon delivery – all the customs details which are required according to the applicable customs or other trade law regulations of the USA, the EU or other countries, such as clear product descriptions, a statement of the country of origin (two-digit ISO code), and the customs value. These details must be stated on every invoice. If demanded by ESG and insofar as it is relevant, the Contractor will also provide a declaration and a movement certificate.

19.4 ESG reserves the right – subject to providing at least ten working days' prior notice – to check the export control and customs procedures used by the Contractor as well as the associated measures taken by it, if ESG has grounds for suspecting any deficiencies in them; these checks shall be at the Contractor's expense. If during such checks ESG ascertains any deficiencies in specific areas of the export controls and/or customs procedures carried out by its contract partner, the Contractor will at its own expense take additional measures which are demanded for justified reasons by ESG. Alternatively, ESG will be entitled to withdraw from the contract if it sees fit to do so.

### 20 Offset

The Contractor will make appropriate efforts to assist ESG with its international "offset obligation" by providing ESG with information about corresponding third party transactions upon request.

### 21 Data protection

The Contractor will ensure that all the people who are entrusted with performing this contract observe the legal data protection provisions. Such persons must be placed under an obligation to preserve data confidentiality in accordance with data protection legislation before they first start their activities, and evidence of this must be provided to ESG on demand.

### 22 Applicability of VO PR (Public Pricing Regulation) 30/53

If this order relates to performance of the public contract, VO PR 30/53 applies. The Contractor is subject to price checking if the public contract demands this.

### 23 Prohibition of headhunting / competition

23.1 Both contracting parties undertake to refrain from indirectly or directly headhunting any current employees of the other contracting party or any person who is under a contractual obligation to that party if persons are entrusted with providing services under the contract. This agreement applies as from the inception of the contract. It ends one year after the end of the contract.

23.2 For the duration of this contract and for a period of 3 months after it ends, the Contractor undertakes not to undertake activities in the project field in which ESG's client operates; this includes new business acquisition activities. This prohibition of competition includes all forms of activity, whether or not on a self-employed basis and whether indirect or direct, including on behalf of third parties, or in the form of a shareholding, indirect shareholding, silent partnership, consultancy relationship, or goodwill, and it also applies to the founding of such a competing company or the acquiring of shares in it.

23.3 If the Contractor is a corporate body, it undertakes to pay ESG a contractual penalty of 18% of the total order value for each contravention of this prohibition of competition according to Clause 23.2. The Contractor remains free to prove that the loss is lower than this. Legal compensation claims remain unaffected.

## **24 Former or current service in the federal armed forces, contact with the offices of the Federal Ministry of Defence, compliance with ZVB/BMVg**

24.1 As a contracting partner of the Federal Ministry of Defence and the federal armed forces, ESG is obliged to ensure that the ZVB/BMVg is complied with in its company and by its contract partners. The ZVB/BMVg can be found on the Internet at:

<http://www.bwb.org> (see under: "Contract Award" □ "Forms" □ "Contract Terms").

24.2 If the Contractor is an individual who is a member of the federal armed forces, a civil servant who has retired from the federal armed forces, or a former professional member of the armed forces who has been retired for no more than five years, he will notify ESG of this without delay and will of his own accord submit to ESG a notification of work activity according to § 20 a of the SoldatenG [Military Personnel Act] as well as a clearance certificate issued by the Federal Ministry of Defence (Clause 11.5.1 ZVB/BMVg [Additional Contract Conditions for the Awarding of Service Contracts/Federal Ministry of Defence]).

24.3 If the Contractor itself is a contract partner or subcontractor of the Federal Ministry of Defence or the federal armed forces, it will ensure in respect of its employees and subcontractors who are serving members of the federal armed forces, civil servants who have retired from the federal armed forces, or former professional member of the armed forces that it complies with the rules laid down in Clauses 11.5.1 and 8.2.1 of the ZVB/BMVg. If the end customer of this order is the Federal Ministry of Defence or the Federal Ministry of Defence, the rules laid down in Clauses 11.4 to 11.6 of the ZVB/BMVg apply.

24.4 The Contractor and its employees must not without the Federal Ministry of Defence's prior consent enter into contact with the offices of the Federal Ministry of Defence or the federal armed forces as intermediaries acting for ESG (Clause 8.2.1 of the ZVB/BMVg).

24.5 This contract is subject to the suspensory condition that the Federal Ministry of Defence issues any clearance certificate that is required to the Contractor, and that any clearance certificate does not prohibit the provision of the service for ESG under certain conditions. If a clearance certificate is required, the Contractor must not commence performance of the contractual service before it is issued.

24.6 The Contractor will hold ESG harmless in respect of all claims resulting from any breach of the above obligations.

## **25 Compliance**

The Contractor agrees to comply with conditions of ESG's "Compliance Code of Conduct for Business Partners" respectively effective at the time of contract's conclusion between ESG and Contractor. The "Compliance Code of Conduct for Business Partners" is available on ESG's website under: <https://www.esg.de/en/company/compliance/>. As far as the Contractor has submitted to an alternative, equivalent Code of Conduct such alternative Code of Conduct shall apply. A serious violation of the Code of Conduct's conditions will be considered as a material breach of the contractual duties.

## **26 Review clause**

26.1 The Contractor grants ESG's audit department the right to undertake – at the Contractor's premises and at any time following prior notification – an inspection and review of all the business transactions between ESG and the Contractor.

26.2 As part of continual monitoring by ESG and the aviation authorities, if a review is undertaken by ESG or the aviation authorities the Contractor is obliged to provide access to technical information/design data and to its business premises to the extent required for the monitoring measures.

## **27 Open Source**

27.1 The use of open source software in connection with the contractual services is only permitted if prior written agreement has been provided.

27.2 If the Contractor uses open source software without ESG's prior written agreement, the Contractor must if requested to do so by ESG take all reasonable steps to replace the open source software with comparable proprietary software.

27.3 The Contractor holds ESG harmless up to an unlimited amount in respect of all third party claims for damages and associated costs which result from the use of open source software without ESG's prior written agreement.

## **28 General provisions**

28.1 The law of the Federal Republic of Germany applies to the exclusion of the German conflict of law rules. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) is excluded. The place of jurisdiction for all legal

disputes arising from and in connection with this order is Munich (Munich District Court I). ESG is also entitled to initiate proceedings at the location of the Contractor's headquarters.

28.2 If a provision of these General Purchasing Conditions, or of the rest of the contract, should be or become ineffective or void, all the other provisions remain valid. The parties undertake to replace ineffective or void provisions by new provisions which fulfil the economic substance of the provisions contained in the ineffective or void provisions in a legally permissible manner. The same applies if a gap becomes evident in the General Purchasing Conditions or in the rest of the contract. In order to fill the gap, the parties undertake to try to establish appropriate provisions which approximate as closely as possible to what the parties concluding the contract would have specified according to the meaning and purpose of the contract if they had considered the point. If the parties are unable to reach agreement, each party may apply to the competent court to have the void provision replaced or the gap filled.