



## Standard Terms and Conditions of Purchase



## 1 Definition

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

“**Acknowledgement**” means the acknowledgement issued with the Order.

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

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

“**Purchaser**” means InFactory Solutions GmbH, and/or Testia SAS companies and/or any Airbus company which places the Order and is identified on the front of the Order.

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

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

“**Order**” means the written authorization requesting the Supplier to furnish Items to the purchaser, considering the Specific Conditions and Conditions.

“**InFactory**” means InFactory Solutions GmbH

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

“**Customer**” means any company, individual, government or entity having the final usage of the Item.

“**Software**”: is a collection of data or computer instructions that tell the computer how to work. Software can be put into categories on common function, type or field of use likewise: Application Software, system Software and computer programming tools, such as compilers and linker.

## 2 Purpose and Scope

The Parties agree that these Conditions together with all Specific Conditions are the only terms and conditions upon which the Purchaser will accept Items from the Supplier and the Purchaser shall not be bound by any different or additional terms and conditions proposed by or purported to apply by the Supplier, whether stated on the Acknowledgment of the order, whether communicated by the Supplier at the time of accepting the Order, starting work, delivering the Item or included in any other document. Sales conditions of the Supplier which deviate from these Conditions shall not become part of the respective contract even in case the Purchaser does not expressly disagree to such conditions.

## 3 Order and Order Acceptance

- 3.1 Within fourteen (14) calendar days of a submitted Order, the Supplier undertakes to notify the Purchaser of acceptance or refusal of the said Order by mail, fax or e-mail.
- 3.2 If the Supplier does not return the signed acknowledgement of the purchase order but accepts the order by any other acknowledgement of the Order, the Purchaser shall not be bound by any different or additional terms and conditions communicated by the Supplier. If the Supplier expressly refuses the Order, it shall be deemed withdrawn and the Parties may negotiate new terms. The Purchaser may withdraw from any negotiations at any time prior to acceptance of an Order by the Supplier and shall incur no liability whatsoever.

## 4 Precedence

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

## 5 Inspection

The Purchaser and the Customer(s), as applicable, shall be entitled to inspect the Item at the Supplier's facilities and the Supplier shall grant access to the Purchaser and the Customer(s) to its facilities and ensure access to the facilities of its suppliers and subcontractors, if any, at reasonable times.

## 6 Delivery and Acceptance

### 6.1 Import free of Customs Duties

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

### 6.2 Packaging

Unless otherwise specified in the Order, as a minimum, the packaging shall be convenient, safe, robust, eco-efficient and cost-optimised, so as to ensure the transport and storage of the delivered Item in an undamaged and serviceable state. The Item shall be delivered with all applicable documentation and with a delivery note in duplicate bearing the Order, Item and item reference numbers, the place of delivery and the delivered quantities. Such applicable documentation shall be attached inside and outside the packaging.

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

- 6.3.1 Agreed delivery and performance dates and deadlines are binding to the Supplier. Delivery shall be made in accordance with the requirements set out in the Order, in particular with the requirements of the Specific Conditions and the Specification, and time shall be of the essence in relation to the delivery dates set out in the Order.
- 6.3.2 Title to and risk in the Item shall transfer to the Purchaser upon delivery to the delivery address specified on the Order. In the case of a notification of rejection of the Item being given to the Supplier by the Purchaser due to the non-compliance by the Supplier with the terms of the Order, title and risk to such Item shall automatically revert to the Supplier.

### 6.4 Acceptance of the Item

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

- 6.4.2 If the Item is not delivered in accordance with the Order or in case of defect, regardless of the aforementioned (30) days timeframe, then Purchaser may at its sole discretion, exercise the following rights:

- a) reject the delivered Item in whole or in part and require the Supplier to refund any payment(s) made by the Purchaser to the Supplier; or
- b) set off the amount of any such payment(s) from any other amounts due to the Supplier from the Purchaser; or
- c) give notice to the Supplier to promptly replace or repair the delivered Item at the Supplier's expense and risk.

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

- 6.5 The implied acceptance set forth in Section 640 paragraph 1 sentence 3 of the German Civil Code (BGB) is expressly excluded.



## 7 General Supplier Undertakings

### 7.1 Compliance

7.1.1 The Supplier shall ensure its compliance and the compliance of all Items with all applicable laws and/or regulations as amended from time to time, including, but not limited to those in connection with:

- (a) environment, health, security, safety, packaging and labelling; and
- (b) the control, restriction, prohibition, recovery and/or elimination of inter alia, chemicals and/or hazardous substances and in each case, provide such information as the Purchaser may require in connection therewith; and
- (c) transport; and
- (d) labour, employment and notably, at any time during the performance of the Order, whenever any work is performed in whole or in part in France, the Supplier commits to provide the Purchaser or its agent with all the documents, certificates and permits legally required as stated in Annex "French Labour Law Requirements" to comply with the French Labour Code provisions relating to the fight against illegal work, the vigilance obligation and the declarations required from French companies and from companies not located in France who post their employees to work in France (The mandatory Annex shall be completed by the Supplier).

The Supplier shall report immediately to the Purchaser any violation of applicable laws and regulations with respect to the execution and/or the performance of the Order by itself or its affiliates, subsidiaries, subcontractors, executives, employees, agents or any individuals or companies that may be involved in performing the Order.

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

### 7.1.2 Anti-corruption

The Supplier, its executives, employees, agents and any individuals or companies that may be involved in the execution and/or the performance of the Order shall comply with all governmental statutes, laws, rules and regulations, including but not limited to all local and international anti-corruption laws applicable to the performance of its obligations and activities under this Order.

Accordingly, in the performance of the Order, the Supplier shall refrain from:

- a) Offering, promising, arranging for or paying, either directly or indirectly, anything of value (including but not limited to monies, gifts and entertainment and special favours) to any individuals, including Public Officials, for the purpose of improperly inducing that individual to perform or fail to perform his/her official duties, or to assist the Supplier or Purchaser in obtaining business, retaining business or securing any improper advantage;
- b) Offering or paying unofficial payments to Public Officials to speed up or obtain routine governmental actions (including but not limited to obtaining permits, licences, or other official documents; processing governmental papers, such as visas and work orders; providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or transit of goods across country);
- c) Seeking, accepting, or paying for any confidential, non-public information regarding competitors, tenders and technical specifications, bids and bid prices.

The Supplier shall ensure that the foregoing provisions are included in all contracts to be entered into with its subcontractors according to Article 7.5 "Sub-Contracting" of the Order.

The Supplier shall give notice immediately to the Purchaser of any investigation or legal proceeding initiated against the Supplier by any public authority relating to an alleged violation of applicable laws and regulations with respect to the execution and/or the performance of the Order by itself or its affiliates, subsidiaries, executives, employees, agents or any individuals or companies that may be involved in the performance of the Order.

The Purchaser shall have the right at any time, through its internal or external auditors, to audit the means implemented by the Supplier and/or its subcontractors in order to ensure its compliance with anti-corruption laws and regulations, during normal business hours. In this respect, the Supplier and/or its subcontractors shall cooperate and provide full and immediate access to the Purchaser and its designated representatives to facilitate such audit.

If the Supplier does not comply with its obligations under Article 7.1.2 "Anti-corruption", InFactory then reserves the right to terminate the Order pursuant to Article 13.1 "Termination for Supplier's Default".

### 7.1.3 Data Protection

The Supplier, its executives, employees, agents and any individuals or companies that may be involved in the execution and/or the performance of the Agreement shall at all times comply with the GDPR as well as all applicable national Personal Data Protection Laws and Regulations (collectively referred as "Data Protection Laws and Regulations") in force during the performance of the Agreement and relevant Order.

The Supplier shall ensure that the obligations contained in this Article "Data Protection" are included in all Agreements which are entered into with its subcontractors.

According to principles of GDPR, personal data should be processed with 'lawfulness, fairness and transparency' from both Purchaser and Supplier. Therefore, information from InFactory should be provided where personal data of Supplier are collected from InFactory solutions, according to article 13 of GDPR <https://www.infactory-solutions.net/compliance-and-legal/>

If the Supplier does not comply with its obligations under this [Article 7.1.3](#) "Data Protection", InFactory then reserves the right to terminate the Agreement pursuant to [Article 13](#) "Termination".

### 7.1.4 Responsibility and Sustainability

Without prejudice to any more detailed provisions contained herein, the Supplier agrees and undertakes to comply with the Airbus Supplier Code of Conduct principles available in five (5) languages on the Airbus portal for Suppliers. The Airbus Supplier Code of Conduct is based on the approved International Forum on Business Ethical Conduct (IFBEC) Model Supplier Code of Conduct. See <https://www.airbus.com/company/ethics-compliance.html> and <https://www.airbus.com/be-an-airbus-supplier.html>.

### 7.1.5 Security

The Supplier shall protect InFactory information/data and/or assets made available to the Supplier in the context of this Order. Supplier shall, at all times, comply with state-of-the-art security requirements

## 7.2 Quality

### 7.2.1 Quality Management System

The Supplier shall ensure its Quality Management System (QMS) complies with the requirements of ISO9001 as applicable to the Item. The Supplier shall ensure that the Order is carried out in compliance with the quality requirements of its QMS approval, as specified above.

### 7.2.2 Conformity Documentation

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

The supplier shall attach to each delivery a Certificate of Conformity (CoC) of the manufacturer, indicating that the requirements of the applicable specifications have been met. The CoC shall include at least the following information:

- Order number;



- part number;
- quantity and unit of measure;
- date of manufacture and date of expiration (where applicable); and
- signature, title and date by a representative.

### 7.2.3 Non-conforming Items

The Supplier is responsible for the quality of its supplies and shall ensure the conformity of the delivered Items with the Specifications, in particular by means of pre-delivery inspections and final tests. The Supplier shall perform a root-cause analysis and take any necessary corrective action to remedy the causes of non-conforming Items, in order to prevent any recurrence and implement a suitable preventive action plan. The Supplier shall confirm implementation of the action plan to the Purchaser's satisfaction.

Where a non-conformity is identified after an Item is delivered by the Supplier, the Supplier shall immediately notify the Purchaser and undertake all necessary corrective measures in support of the Purchaser, until resolution of the non-conformity to the Purchaser's satisfaction and completion of all corrective and preventive actions and such actions shall be undertaken without limiting the Supplier's liability to the Purchaser for any losses incurred under Article 12 below.

### 7.2.4 Quality Records

The Supplier shall inspect all incoming materials to ensure conformance with all applicable requirements and drawings of Items pertaining to the Order and shall document all inspection requirements and acceptance criteria to ensure they are in line with the specific requirements communicated to it by the Purchaser for the Items. The Supplier shall ensure complete identification and traceability of all related products to the raw material used and applicable documentation.

All records must be stored in a controlled environment/suitable manner and according to applicable legal rules, so that they remain identifiable, legible, reproducible and available to the Purchaser.

### 7.3 Personnel

The Supplier shall be responsible for ensuring that its personnel are fully trained, skilled, qualified and capable of fulfilling all of the requirements contained in the Order. The Supplier shall make corresponding proof available to InFactory upon request with short notice for a sample examination.

### 7.4 Advice/Delivery Notes and Conformity Documentation

The Supplier shall, on the day of despatch of each consignment of Items, send advice notes and such conformity documentation (eg CoC) or as may be required, in accordance with Article 7.2.2 above. One copy of the CoC or such other document as may be required shall accompany each consignment and a further copy shall be mailed to the Purchaser's goods receiving department.

### 7.5 Sub-contracting.

The Supplier is not authorized to subcontract to third parties without the prior written consent of InFactory. The unauthorized subcontracting of third parties entitles InFactory to rescind the contract in whole or in part and to claim damages, the Supplier shall remain fully responsible for the Item and shall ensure that its suppliers comply with all provisions of the Order relevant to any subcontracted work.

Where the supplier is authorised to subcontract, the supplier shall communicate to the Purchaser on a regular basis the list of the subcontractors and the purchaser reserves the right to reject any of the listed subcontractors without further justification. Such rejection will neither entitle the Supplier to claim for any breach or damages under the contract nor be a sufficient ground for an Excusable Delay.

## 8 Export Control

8.1 The Items provided and delivered by the Parties in connection with the Project may be subject to national, foreign and international trade and export control laws and regulations and the Parties acknowledge that they will observe such trade and export control laws and regulations, in particular the export control laws of their respective country of residence, the United States of America, and the European Union and its Member States with respect to (i) all Items that they will deliver to the other Party within the scope of this contract and (ii) all Items that they will receive from the other Party within the scope of this contract if such products or services are shipped or delivered to another country.

8.2 The Supplier shall identify any part of the Item which may be subject to export laws and regulations and shall provide the Purchaser with all information concerning such applicable export regulations as well as with any assistance they may request in implementing such applicable export regulations. The Supplier shall clearly indicate on all delivery notes the classification determination and the number of the applicable export license and/or authority and mark all documentation provided subject to the applicable export control laws and regulations with the appropriate classification determination, export license number, applicable license exemptions and distribution restrictions. The Purchaser requests the Supplier to provide a completed export form (ECCD: Export Control Classification Declaration) identifying any part of the Item which is subject to export laws and regulations. <https://www.airbus.com/be-an-airbus-supplier.html>

8.3 The Supplier shall obtain all relevant official approvals, licenses and authorizations required for the worldwide export, delivery and operation of the Item by the Purchaser. The Supplier shall provide the Purchaser, except if prohibited by the applicable export regulations, with a copy of all relevant official approvals, licenses and authorizations.

The Supplier represents that, at the date of signature of the Agreement, it is not subject to any sanctions according to Export Regulations. The Supplier shall immediately inform InFactory in writing if during the Agreement's duration it becomes subject to any sanctions, investigation, claim, action, or proceedings according to Export Regulations.

In the event that the Supplier is subject to any sanctions according to Export Regulations, InFactory will be entitled to:

- suspend performance of its obligations under the Agreement without prior notice and with immediate effect; and/or
- terminate the Agreement or the Order with a prior written notice and with immediate effect in accordance with Article 13 "Termination";

in each case, without any liability for InFactory.

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

## 9 Delays

### 9.1 Excusable Delay

Neither Party shall be responsible for nor be deemed to be in default of its obligations under the Order to the extent that such default is caused by an "Excusable Delay" (defined as an event beyond the reasonable control of either Party and not occasioned by its fault or negligence, including without limitation, an act of God, fire, flood, explosion, earthquake, any act of government, war, insurrection or riot, pandemic). The affected Party undertakes to mitigate the effects of the Excusable Delay. If an Excusable Delay occurs and causes or is likely to cause a delay in the performance by either Party of its obligations under the Order, such Party shall notify the other Party in writing immediately after becoming aware of such Excusable Delay and provide reasonable evidence of the Excusable Delay. Immediately after the Excusable Delay has ceased and subject to the provisions of Article 13.2, the affected Party shall, unless otherwise agreed in writing, resume the performance of its obligations.



## 9.2 Non-Excusable Delay

- 9.2.1 A delay by the Supplier in the performance of its obligations under the Order, which does not qualify as an Excusable Delay, shall be a “Non-Excusable Delay”. In such event, the Purchaser shall be entitled to:
- 9.2.1.1 -claim liquidated damages up to 5% of the total value of the Order; and
- 9.2.1.2 -claim, in the event that the amount of damages exceeds the total amount of the above liquidated damages, the full amount of such excess damages in respect of all losses, expenses, costs, claims and other damages incurred by the Purchaser arising from the Non-Excusable Delay.
- 9.2.2 InFactory shall be entitled to charge the penalty in addition to specific performance. Further rights and claims shall be reserved herewith.

## 10 Warranties

- 10.1 Without prejudice to any other warranties, the Supplier warrants to the Purchaser that the Item and/or any part thereof shall (i) be free from any defects and be suitable for their intended use and; (ii) comprise only materials and goods which are new, of recent manufacture, merchantable and of satisfactory quality and; (iii) be compliant with the quality requirements and with the Specification, if any, of the Purchaser and; (iv) in the case of a service, be performed with all reasonable skill and care and in accordance with best industry practice.
- 10.2 The Supplier shall, promptly repair or replace, at the Purchaser's discretion, any defective or non-compliant Item, at no cost to the Purchaser. The warranty will be for a minimum period of thirty-six (36) months from the acceptance date of the Item by the Purchaser, as provided for in Article 6.4 or in the case of a service, from completion of such service. The outstanding warranty period, including the period under which the Item was under repair, shall apply to any repaired and/or replaced Item as from the date of its first use after such repair or replacement or in the case of a service, on resumption of such service. The Supplier shall be liable for all costs incurred by the Purchaser, as a consequence of the defect or non-compliance of the Item or service, including but not limited to, removal, reinstallation, transport, certification and tests.

This Article shall apply in addition and without prejudice to any other rights and remedies under the Order and/or available to the Purchaser at law.

## 11 Price and Payment

### 11.1 Price

Unless otherwise specified in the Specific Conditions, prices are fixed and firm and shall be based on the delivery of the Item, as per Article 6.3.1, to the place specified in the Order. No additional charge shall be made by the Supplier for packing, insurance or delivery unless otherwise agreed by the Parties in the Specific Conditions and set out in the Order and any such charge shall be separately identified in the Supplier's invoices. Deliveries are made DAP (Delivery At Place), INCOTERMS 2020, unless otherwise in the Purchase Order.

### 11.2 Taxes

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

### 11.3 Invoices

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

### 11.4 Payment

Payments shall be made by electronic bank transfer to the Supplier's nominated bank account, provided that the invoice received from the Supplier is valid, accurate and due. The Purchaser will make payments only for those Items which have been delivered in accordance with the terms of the Order. In the event of a dispute between the Parties, the Purchaser shall be entitled to withhold the payment of any disputed element of the invoice until resolution of such dispute. Payments shall occur within sixty (60) days from the end of the month in which the invoice is issued, paid the next tenth (10th) day of a calendar month (herein referred to as "60EOM10"). Should the payment day be a Saturday, Sunday, or a bank holiday then the payment shall be made the following business day.

Any interest rate for late payment of the InFactory shall be limited to the legal interest rate stipulated in § 288 II in connection with § 247 of the German Code Civil (BGB). § 288 IV BGB shall be excluded

## 12 Liability and Insurance

- 12.1 The Supplier shall, except in the case of gross negligence or willful misconduct of the Purchaser, be solely liable for and shall or shall cause the Customer to indemnify and hold harmless the Purchaser, from and against all liabilities, claims, damages, costs and expenses incident thereto or incident to successfully establishing the right to indemnification (including legal expenses and attorney fees), for injury to or death of any person (excluding directors, officers, agents and employees of the Purchaser) and/or for loss of or damage to any property (including the components, equipment, parts the services are performed) and/or for loss of use thereof arising out of, caused by or in any way connected with any Items provided by the Purchaser under these Conditions."
- 12.2 Each Party shall be liable for, indemnify and hold harmless the other Party, its officers, directors, employees or insurers from and against any and all claims, losses, liabilities, suits, judgements, expenses and costs (including legal fees) or the like in any way connected with the death of or injury to any person whomsoever, or loss of or damage to any property of any person, entity or company (including the other Party) when arising out of, or having its origin in, the intentionally or negligently committed acts or omissions of the indemnifying Party in connection with the performance of the Order.
- 12.3 Insurance

The Supplier shall subscribe and maintain, at his own expenses, with insurers of recognized reputation and security, the insurance policies needed for the coverage of its liabilities under the Order.

Supplier shall furnish annually to the Purchaser the corresponding insurance certificates evidencing that such insurances are in full force and effect.

- 12.3.1 To the extent that the performance of this Order requires the presence of the Supplier's employees, agents or sub-contractors on the site(s) of the Purchaser or other designated sites, the Supplier shall effect and maintain general third party liability insurance commensurate with the exposure potential for loss of or damage to property of the Purchaser or death of or injury to persons resulting from performance of the



Order and such insurance cover shall not be less than fifteen millions Euros (15,000,000 EUR) per occurrence, or any lower figure to the extent agreed in writing by Purchaser.

- 12.3.2 If the Supplier is required to carry out work or services at or on an airfield, the Supplier shall ensure that its general third-party liability insurance extends to aviation and air-side exposure and such insurance cover shall not be less than twenty-five million Euros (25,000,000 Euros).
- 12.3.3 If the Supplier is required to carry out work which requires professional indemnity insurance, the Supplier shall provide the Purchaser with a certificate of insurance or such other evidence reasonably satisfactory to the Purchaser that such insurance is in full force and effect.
- 12.3.4 Should the limits of coverage of the insurance policies subscribed by the Supplier exceed the amounts requested by the Purchaser, then the Purchaser shall have the benefit of the full limits.

### **13 Termination**

#### **13.1 For Supplier's Default**

In the event the Supplier breaches or fails to comply with one or more of its obligations herein, the Purchaser may give the Supplier written notice of such breach or non-compliance at any time thereafter. The Supplier shall remedy such breach or non-compliance within twenty-eight (28) days from the date of such notice. If the Supplier does not remedy the breach or non-compliance within the said twenty-eight (28) days or if the breach is not capable of remedy then the Purchaser shall, without incurring any liability whatsoever, have the right to immediately terminate the Order in progress (in whole or in part) by giving written notice of termination to the Supplier to that effect, without prejudice to the Purchaser's rights to claim damages and/or any other remedies which the Purchaser may have at law and/or under the Order. The provisions of Article 13.5 below shall apply, and the termination account shall proceed accordingly.

#### **13.2 For Excusable Delay**

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

#### **13.3 Termination without Supplier's Default/Cancellation of Order**

In the event of cessation of any of the Purchaser's activities with respect to a Purchaser's Customer project or service for which a specific Order is intended (including, without limitation, because a third party has not fulfilled its obligation to supply goods required by the Purchaser or termination or cancellation of any customer's orders or contracts in progress), the Purchaser may reschedule the Order with immediate effect at no additional cost to the Purchaser, or may terminate the Order (in whole or in part) by giving a thirty (30) day prior written notice of termination to the Supplier, without incurring any liability whatsoever save that the provisions of Article 13.5.3 below shall apply and the termination account shall proceed accordingly.

#### **13.4 Termination for Insolvency**

Should the Supplier cease to make payments, or if an interim insolvency administrator is appointed or if insolvency proceedings are commenced in relation to the assets of the Supplier, InFactory may terminate the contract and/or any purchase orders issued thereunder. In the event of termination InFactory may continue to utilize existing facilities, deliveries or services already performed by the Supplier in exchange for reasonable payment.

#### **13.5 Termination procedures**

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

#### **13.5.2 Termination for Supplier's Default**

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

#### **13.5.3 Termination for Excusable Delay/without Supplier's Default**

The Purchaser and the Supplier shall agree a fair and reasonable price for all work done and material purchased for the purpose of carrying out work on the Order up to the date of termination. Either Party may prove to the other Party that the actual costs were less/more than claimed by the respective other Party. In order to agree such price, the Supplier shall submit an account to the Purchaser within three (3) months from the date of termination. The agreed price, together with any sums paid or due to the Supplier under the Order before the effective date of termination shall not exceed the total price of the Items under the Order and such payments shall be the Purchaser's sole liability in respect of the termination.

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

#### **13.6 Surviving Articles**

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



## **14 Intellectual Property Rights**

- 14.1 All intellectual property created as a result of the work undertaken by the Supplier or its sub-contractors for the purpose of the Order shall vest in and be the sole property of the Purchaser. With regard to any unassignable intellectual property created as a result of the work undertaken by the Supplier or its sub-contractors for the purpose of the Order, the Supplier grants, and undertakes to cause its subcontractor to grant respectively, at no additional charge beyond the price specified on the Order, an exclusive, worldwide and unlimited in time and scope licence to the Purchaser to exploit the respective intellectual property.
- 14.2 The Supplier undertakes to execute any assignment or other documentation necessary to give effect to the transfer of the intellectual property created as a result of the work undertaken by the Supplier or its sub-contractors for the purpose of the Order to the Purchaser.
- 14.3 The Supplier hereby grants to the Purchaser, at no additional charge beyond the price specified on the Order, for the duration of the rights, but as a minimum for the duration of the Order or the contract or agreement associated with the Order, a non-exclusive and worldwide licence to use and have used, any of the Supplier's background intellectual property disclosed by it to the Purchaser under the Order, necessary for the performance of the Order or the use of the Item. The Supplier grants the Purchaser the right to sub-license all the above-mentioned rights.
- 14.4 In the case of bespoke Items or Items customised for the Purchaser, such licence granted by the Supplier to the Purchaser, shall include for the Purchaser the right of reproduction in any form, language, format and medium, the right of distribution in part or in whole including the right to sell, loan, rent, distribute, download by any means and in any language, the right to modify, adapt, improve, correct and translate in any form and language, and interface with any other item. The Supplier grants the Purchaser the right to sub-license all the above-mentioned rights.

### 14.5 Third party developed software

The Supplier shall inform the Purchaser prior to the acknowledgment of the Order whether the to be delivered Item contains a Software or not. The Supplier shall create a Software License Compliance Report (SLCR) and deliver it to the Purchaser explaining additionally the impact of this Software on the Item defined in the Order. The format and content of the "SLCR" will be validated from the Purchaser.

If the Supplier plans to use any new Software in the Item defined in the Order, the Supplier shall unsolicited provide an updated version of the "SLCR" and the impact of this new Software on the Item.

Updating the "SLCR" is a continuous unsolicited task to be performed from the Supplier until Item acceptance from the Purchaser. A signed final version of the "SLCR" shall be provided with the final documentation of the delivered Item

Following the delivery of the SLCR from the Supplier:

#### 14.5.1 Open-source software

The use by the Supplier and/or the integration of any kind of open-source software for the development needs of the ordered Items requires the prior written consent of the Purchaser.

#### 14.5.2 Third party proprietary software

The use by the Supplier and/or the integration of any kind of third-party proprietary software for the development needs of the ordered Items requires the prior written consent of the Purchaser.

The breach by the Supplier and/or the failure to comply with the aforementioned provision entitles the Purchaser to terminate the contract forthwith without incurring any further liability.

### 14.6 Infringement Indemnity

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

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

14.8 The Purchaser may accede to the Supplier being a party in a legal dispute by filing third-party notice. In any case, the Parties shall consult closely in relation to defending such claims, suits and actions.

## **15 Confidentiality and Publicity**

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

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

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

15.4 The obligations herein relating to confidentiality shall remain in full force and effect for the duration of any Order and continue for a period of five (5) years after the expiry or termination of the Order.

15.5 Neither Party shall make any news release or public announcement referring to the Order, nor use, reproduce or imitate for any purpose whatsoever any of the filed, registered or unregistered trademarks of the other Party, including its company names, associated

## **16 Assignment and Transfer**

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

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

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

### 17.1 Amicable Resolution

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



## 17.2 Arbitration

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

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

The Parties may, by agreement in writing following the notification of the Dispute, elect to adhere to a different form of alternative dispute resolution or to litigate in courts of law, in order to resolve the Dispute.

## 18 Amendments

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

## 19 Independent Contractors

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

## 20 No Joint and Several Liability

The Parties agree that the Purchaser alone shall be exclusively liable to the Supplier for payment of all sums due in connection with the Order to the exclusion of all other Testia SAS and Airbus Companies.

## 21 Whole Agreement

This Order supersedes all prior agreements, understandings and representations, excluding fraudulent representations and collateral agreements, whether written or oral between the Parties, relating to the subject matter of the Order.

## 22 Notices

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

## 23 Waiver

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

## 24 Severability

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

## 25 Language

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