

General Purchasing Conditions

Conditions applicable to the purchase of goods and services by European Spallation Source ERIC

1. INTRODUCTION

1.1 These General Purchasing Conditions (the "**General Conditions**") apply to the purchase by European Spallation Source ERIC ("**ESS**") of any materials, components, products and/or services (the "**Deliverables**") offered or provided by any supplier (the "**Supplier**"). They apply to all requests made by ESS for quotations or offers, to any offers made by the Supplier and are an integral part of any contract, purchase order, order confirmation or other agreement for the provision of Deliverables to ESS (an "**Agreement**"). No terms or conditions contained in any document issued by the Supplier that deviate from these General Conditions shall be binding on ESS.

2. OBLIGATIONS OF THE SUPPLIER

2.1 Scope of Deliverables

2.1.1 The scope of the Deliverables to be supplied by the Supplier shall be specified in the Agreement.

2.1.2 The Supplier shall provide and be responsible for all labour, material, equipment and other resources required for the performance of the Agreement.

2.1.3 ESS may in writing order a change in the nature, scope or timing of the Deliverables (a "**Change**"), or ask the Supplier to propose a Change. ESS and the Supplier shall in writing agree the value of the Change and its impact, if any, on the predetermined time schedule or other terms of the Agreement prior to the Supplier's commencement of works relating to the Change.

2.2 Performance of the Agreement

2.2.1 The Supplier shall perform the Agreement in full in accordance with applicable laws and regulations, permits and authorisations, and recognised up-to-date professional practices and standards.

2.2.2 The Supplier shall perform the Agreement in accordance with ESS' environmental policies, which include conserving energy, water, paper and other resources, reducing waste and minimising the release of greenhouse gases and/or other substances damaging to health and the environment. Further information on the relevant policies can be obtained from ESS or be found at www.esss.se.

2.2.3 The Supplier shall keep ESS fully informed of the progress of the Agreement by: (a) providing ESS with such written reports as are specified in the Agreement or as ESS may otherwise reasonably require; (b) attending meetings and briefings with the staff of ESS and/or other Suppliers as reasonably required by ESS; and (c) taking all other reasonable actions which are necessary to enable ESS to monitor the scientific, technical and financial performance of the Agreement.

2.2.4 ESS shall be entitled to visit the premises of the Supplier and its sub-contractors. If ESS requests that it witness any tests or measurements to be performed by the Supplier or its sub-contractors, the Supplier shall give ESS reasonable prior written notice of the date(s) and place(s) of such tests and measurements. In the event of failure by the Supplier to give such notice, ESS shall be entitled to demand at any time that such tests and measurements be repeated at the expense of the Supplier, who shall be liable for any delay resulting therefrom.

2.3 Delivery

2.3.1 The Deliverables shall be delivered in full to ESS by the Supplier in accordance with the time schedule agreed as part of the Agreement without entitlement to partial deliveries or performances unless otherwise agreed in writing.

2.3.2 Unless otherwise agreed in writing, all sold tangible deliverables shall be delivered DAP Incoterms (in accordance with the ICC's most recent edition) and unloaded at the final location indicated by ESS. Title and risk of loss to tangible deliverables will pass to ESS upon timely delivery thereof.

2.3.3 The Supplier shall deliver to ESS, at such times as may be agreed but at the latest upon delivery of the Deliverables, all technical documentation relating to the Deliverables, such as operating and maintenance manuals, training manuals, drawings, technical data sheets, product safety sheets, certificates of conformity and any other supporting documentation.

2.3.4 If the Supplier foresees, for any reason, a delay in the delivery of the Deliverables, the Supplier shall immediately send a written notice to ESS and take all reasonable actions to remedy such delay. The Supplier shall in such notice state the reason for the delay and the date on which the delivery is expected to be made. If the Supplier fails to give such notice, ESS shall be entitled to compensation for any additional costs ESS incurs, which could have been avoided, had ESS received such notice.

2.3.5 If the Supplier is delayed, ESS may demand in writing that the Supplier, at its own cost, deliver the Deliverables by a reasonable deadline established by ESS. If the Supplier fails to do so, ESS shall be entitled to purchase substitute Deliverables from an alternate supplier and recover all related losses and costs from the Supplier.

2.3.6 If there is a delay, then ESS is entitled to withhold payment due to the Supplier until the Deliverables have been delivered in full.

2.3.7 The Supplier is liable for all damages, losses and costs incurred by ESS resulting from failure of the Supplier to supply Deliverables in accordance with the agreed time schedule.

2.3.8 The Supplier is responsible for obtaining and maintaining any export licences required for delivery of the Deliverables to

ESS. The Supplier shall inform ESS of and issue all documentation which may be required by law, regulation or reasonably requested by ESS regarding the export, import or re-export of the Deliverables.

2.4 Warranties

- 2.4.1 The Supplier warrants that the Deliverables shall be in accordance with all agreed specifications and requirements, that they shall be fit for the intended purposes, that they shall be free from defects in design, materials and workmanship, that they shall meet all applicable statutory requirements and standards, especially those relating to environment and safety laws and regulations. Any representations or warranties included in the Supplier's catalogues, brochures, sales literature and quality systems shall be binding on the Supplier.
- 2.4.2 Unless a longer warranty period is agreed as part of the Agreement, the Supplier warrants the Deliverables for a period of two (2) years after delivery. Claims made under the warranty shall suspend the warranty period until the Supplier has remedied the default, thus extending the warranty period accordingly.
- 2.4.3 If any Deliverables at any time are found to not be in conformity with the Agreement, then ESS, in addition to its rights and remedies provided by law, shall have the option at its sole discretion and by written notice to the Supplier: (a) to accept such Deliverables with an equitable reduction in price; or (b) to reject such non-conforming Deliverables and require delivery of replacement Deliverables or the making of necessary repairs or corrections at the Supplier's expense. All tangible Deliverables rejected for any reason will be stored and/or returned to the Supplier as reasonably determined appropriate by ESS, at the Supplier's risk and expense. If the Supplier fails to deliver suitable replacements, make repairs/corrections or retrieve the non-conforming tangible Deliverables by a reasonable deadline established by ESS, then ESS shall be entitled to replace or repair/correct such Deliverables through an alternative supplier and recover all related losses and costs from the Supplier.
- 2.4.4 The Supplier is liable for all damages, losses and costs incurred by ESS resulting from the failure of the Supplier to deliver conforming Deliverables, even if the Supplier has cured the failure under Article 2.4.3.
- 2.4.5 Any Deliverables repaired/corrected or replaced shall be subject to the provisions of this Article 2.4, and the warranty period re-commence following delivery or repair/correction.
- 2.4.6 No inspection, approval or acceptance by ESS of Deliverables shall relieve the Supplier from responsibility for defects or other failures to meet the requirements of the Agreement.

3. OBLIGATIONS OF ESS

3.1 Purchase Price

- 3.1.1 Subject to Article 2 above, ESS shall pay the Supplier for the Deliverables in accordance with the Agreement.
- 3.1.2 All taxes, charges and fees of whatever nature, which may be imposed by any authority on the amounts paid to the Supplier under the Agreement, shall be paid and borne by the Supplier.

3.2 Payment

- 3.2.1 Unless otherwise expressly agreed in the Agreement, ESS shall make payment against invoice within 30 days from receipt of the invoice. If ESS disputes any invoice in whole or

in part, then ESS shall promptly give the reasons for withholding the disputed amount and pay any undisputed amount upon resolution of such issue(s).

ESS may withhold and/or set-off from any payment obligations owed to the Supplier by ESS, whether or not then due, any and all claims ESS in good faith may have on the Supplier under the Agreement.

- 3.2.2 Where an invoice or part of an invoice is not disputed and is not paid by ESS as required under the Agreement, ESS shall pay interest on the unpaid amount from the due date to the date of payment, as per the Swedish Interest Act.
- 3.2.3 ESS is entitled to make inspections at the Supplier's premises in order to ensure the Deliverables' compliance with the Agreement, to a reasonable extent and subject to three business day's advance notice. The Supplier shall fully cooperate during such inspections and shall give any explanations that may be reasonably requested. ESS shall hold in confidence any information disclosed by the Supplier as a result of such inspection and not use the information for any other purpose than as set out above.
- 3.2.4 The Supplier shall state on its invoices to ESS whether it is registered or not for F-tax in Sweden. In case the Supplier fails to provide such information to ESS, or does not have a valid F-tax registration (despite having an obligation to be registered as such), ESS reserves the right to withhold charges from any invoice sent to ESS corresponding to 30% of any charges for work performed by the Supplier in Sweden (if applicable and corresponding to the Contractor's tax obligation), if ESS has an obligation to do so according to applicable law.

4. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

4.1 Intellectual Property Rights

- 4.1.1 The disclosure of intellectual property or know-how by ESS to the Supplier shall not create any right in the Supplier relating to that intellectual property or know-how, other than a licence to use the intellectual property or know-how to the extent necessary for the performance of its obligations under the Agreement.
- 4.1.2 Any intellectual property and know-how generated in the performance of the Agreement shall exclusively vest in ESS automatically and immediately once the right is created, including the right to make changes, effect transfers, licences and sublicenses. The Supplier shall execute all documents and all acts required to ensure such vesting.
- 4.1.3 Notwithstanding Article 4.1.2, the Supplier shall remain the owner of its Pre-existing Intellectual Property Rights. "Pre-existing Intellectual Property Rights" refers to any intellectual property rights and know-how in existence on or before the effective date of the Agreement or independently developed or acquired by the Supplier during the term of the Agreement without using any information disclosed by ESS.
- 4.1.4 Any Deliverables containing Pre-existing Intellectual Property Rights provided by the Supplier shall be deemed to include a royalty-free and perpetual licence to ESS for all such intellectual property rights and know-how necessary for the free and unlimited use of the Deliverables; including repair, modification and replacement by ESS or by any third party designated by ESS within the scope of ESS' activities.
- 4.1.5 The Supplier shall ensure that the use of intellectual property and know-how within the scope of Article 4.1.2 does not infringe any third party intellectual property rights or know-

how and shall indemnify and hold harmless ESS from all damages, losses and costs incurred by ESS due to any claim related thereto.

4.2 Confidentiality

4.2.1 If a party (the "Receiving Party") receives any information of a confidential or proprietary nature, regardless of form or media ("Confidential Information") from the other party (the "Disclosing Party"), the Receiving Party shall:

- (a) keep the Confidential Information strictly confidential;
- (b) make available the Confidential Information only to certain officers and employees of the Receiving Party who need access to it for the purpose of the Agreement;
- (c) not pass the Confidential Information to any third party, even under a confidentiality agreement, without the prior written consent of the Disclosing Party (except that ESS shall be entitled to disclose Confidential Information to consultants and persons temporarily assigned to ESS that meet the requisite Article 4.2.1(b) above); and
- (d) use the Confidential Information only for the purpose of the Agreement.

4.2.2 The foregoing obligations shall not apply to any portion of Confidential Information that the Receiving Party can establish:

- (a) was known to the Receiving Party prior to its receipt from the Disclosing Party;
- (b) at the time of disclosure was, or thereafter becomes through no fault of the Receiving Party, generally available to the public by publication or otherwise;
- (c) was received without any obligation of secrecy from a third party which, to the best knowledge of the Receiving Party, has the right to disclose the same;
- (d) was independently developed by the Receiving Party without access or reference to the Confidential Information of the Disclosing Party; or
- (e) was disclosed in order to comply with applicable laws or regulations or with a court or administrative order.

4.2.3 The Receiving Party shall, to the extent permitted by applicable law, impose the same obligations as set out above on all its officers and employees with access to the Confidential Information, both during and following their retention by the Receiving Party. Notwithstanding the foregoing, each Receiving Party shall be liable for any breach of Article 4.2.1 by its officers and employees.

5. LIABILITY AND INSURANCE

5.1 If a party breaches the Agreement, it shall indemnify and hold harmless the other party from all damages, losses and costs caused by the breach.

5.2 The Supplier shall indemnify and hold harmless ESS from all claims, damages, losses and costs resulting from or arising out of a third party's cause of action for death, personal injury or property damage which results from: (a) any defect in the Deliverables; (b) any non-compliance by the Supplier with any of its warranties or obligations under the

Agreement; or (c) any negligence or fault of the Supplier in connection with the performance of the Agreement.

5.3 Neither party shall be liable to the other party for any indirect or consequential damages or losses including but not limited to loss of production, profit or goodwill, whether under contract, in tort or otherwise, provided, however, that this limitation shall not apply to claims arising from fraud, wilful misconduct or gross negligence nor limit the liability set out in Article 4.1.5.

5.4 The Supplier shall take out and maintain appropriate and adequate professional liability insurance and product liability insurance for its business operations and activities performed under the Agreement. However, the limitations of the insurance coverage shall not be construed as limitations of the Supplier's liability under the Agreement.

6. SUSPENSION AND TERMINATION

6.1 Suspension

6.1.1 ESS may suspend all or part of the Agreement at any time by written notice to the Supplier. Upon receipt of this written notice, the Supplier shall stop the performance of the Agreement and minimise expenditures. If ESS suspends all or part of the Agreement for reasons other than the Supplier's material breach of its obligations under the Agreement, then the Supplier shall be entitled to extended time for completion of the Agreement according to the suspension and compensation for reasonable work and expenses pertaining to the arrangements to stop and resume the Agreement.

6.1.2 The Supplier may suspend the Agreement if ESS is in material breach of its obligations under the Agreement and fails to rectify such breach within 30 days of a notice in writing from the Supplier.

6.2 Termination

6.2.1 Either party may terminate the Agreement, in whole or in part, if the other party commits a material breach of the Agreement and fails to remedy the same within (30) days of its receipt of a written demand to that effect.

6.2.2 ESS may terminate the Agreement, in whole or in part, for convenience with immediate effect at any time prior to completion of the Agreement. Upon receipt of this notice, the Supplier shall stop the performance of the Agreement and minimise expenditure.

6.2.3 If ESS terminates the Agreement in accordance with Article 6.2.2 above, ESS shall pay the Supplier an amount comprising the value of the Deliverables to ESS provided up to the date of termination. The Supplier is then also entitled to verifiable finishing costs that are agreed in advance with ESS (i.e. prior to being incurred by the Contractor), up to a maximum amount of ten (10) per cent of the agreed price for the Deliverables. "Finishing costs" shall mean reasonable direct costs for a proper and diligent discontinuation and/or handing over of the Deliverables to ESS or a third party designated by ESS.

6.2.4 Upon termination of the Agreement, the Supplier shall promptly deliver to ESS all documents and other information in the Supplier's possession that have been prepared in connection with the Agreement, whether completed or in progress.

6.2.5 Termination of the Agreement shall not affect the rights and obligations of the parties under Articles 4 or 5 above or

under any other provisions of the Agreement, which by their nature or express terms are intended to survive termination.

7. FORCE MAJEURE

- 7.1 Neither party shall be held liable or deemed in breach of the Agreement for any failure of or delay in performance of its obligations to the extent that and for so long as such performance is prevented or delayed by causes beyond its reasonable control, such as fire, flood, earthquake, war, embargoes, blockades, strikes, riots, governmental interference and defects or delays in deliveries by subcontractors if caused by any circumstance referred to in Article 7. The party whose performance is so prevented or delayed shall promptly inform the other party of the occurrence of any such event and such party shall use all reasonable efforts to avoid the effect of such event and to mitigate damages to the fullest extent possible. Upon termination of such event, the prevented party shall forthwith resume performance of the Agreement.
- 7.2 If by reason of any of the above circumstances, the failure or delay to perform has lasted for more than one (1) month, either party shall be entitled to terminate this Agreement by written notice to the other party.

8. MISCELLANEOUS

8.1 Independent Supplier

- 8.1.1 The Supplier shall be an independent Supplier in the performance of the Agreement and shall have complete charge of the persons engaged in the performance of the Agreement. Nothing in the Agreement creates or shall be deemed to create any agency, partnership or joint venture relationship between ESS and the Supplier. The Supplier shall always act within the instructions given by ESS and has no authority to act on behalf of or to bind ESS in any way.
- 8.1.2 All persons engaged by the Supplier shall for all intents and purposes be considered employees or representatives of the Supplier. The Supplier shall be responsible for obtaining necessary permits and paying all taxes and charges for all persons engaged by the Supplier.

8.2 Subcontracting

- 8.2.1 The Supplier shall have the right to involve subcontractors, availing of specific expertise, in the performance of the Agreement. The Supplier shall notify ESS of all subcontractors, specifying in each case their specific expertise.
- 8.2.2 The subcontracting of any part of the Agreement shall not relieve the Supplier of any liability or obligation under the Agreement. The Supplier is fully responsible for compliance with the Agreement by all of its subcontractors.

8.3 Amendments

- 8.3.1 Amendments to or changes in the Agreement shall, in order to be valid, be made in writing and signed by authorized representatives of each of the parties and shall be clearly stated as amendments to or changes of the Agreement.

8.4 Assignment

- 8.4.1 Except with the prior written consent of ESS, the Supplier shall not assign or otherwise transfer partially or totally any of its rights or obligations under the Agreement.
- 8.4.2 ESS shall have the right to assign or otherwise transfer any or all of its rights and obligations under the Agreement to a

successor company or other legal entity established by the partner states in the ESS project.

8.5 No Waiver

- 8.5.1 The provisions of the Agreement may not be waived except in writing. The failure of a party to insist upon strict adherence to any provision of the Agreement is not a waiver of any right under the Agreement, and shall not deprive that party of the right at any later time to insist upon strict adherence to the Agreement.

8.6 Anti-Corruption

- 8.6.1 The Supplier warrants that no offer, payment, consideration or benefit of any kind which constitutes an illegal or corrupt practice has been made or shall be made, either directly or indirectly, as an inducement or reward for entering into the Agreement or executing the Agreement. Any such practice will be grounds for terminating the Agreement without any compensation to the Supplier and for other such additional actions, civil and/or criminal, as applicable.

8.7 Waiver of Immunity

- 8.7.1 Any party who is a public body of any nature hereby irrevocably and unconditionally agrees that it is subject to suit with respect to its obligations hereunder and that the execution, delivery and performance of the Agreement constitute private and commercial acts and waives any right of immunity which it now has or may in the future have in any jurisdiction in connection with any legal proceedings.

8.8 Use of ESS images or logos

- 8.8.1 Without the prior written consent of ESS, the Supplier shall not use or make reference to any images or logos of ESS.

8.9 Publicity

- 8.9.1 Without the prior written consent of ESS, the Supplier shall not publicise the Agreement or any part thereof unless it is obliged to do so to comply with applicable laws or regulations or with a court or administrative order.

9. GOVERNING LAW AND RESOLUTION OF DISPUTES

- 9.1 The Agreement and all rights and obligations of the parties shall be governed by and construed and enforced in accordance with the substantive laws of Sweden without giving effect to any choice of law rules and principles thereof.
- 9.2 Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC"). The Rules for Expedited Arbitrations shall apply, unless the SCC in its discretion determines by taking into account the complexity of the case, the amount in dispute and other circumstances that the Arbitration Rules shall apply. In the latter case, the SCC shall also decide whether the Arbitral Tribunal shall be composed of one or three arbitrators. The seat of arbitration shall be Lund, Sweden.
- 9.3 The Parties undertake and agree that arbitral proceedings pursuant to this Agreement shall be kept strictly confidential, and all information disclosed in the course of such proceedings, as well as the contents of any decision or award made, shall constitute Confidential Information.