

ND SatCom GmbH - Export Conditions

Stand 06/2014

The deliveries to be performed and/or the services to be rendered shall be carried out in accordance with the following Export Conditions, if not otherwise agreed upon in writing. Any General Terms and Conditions of the Purchaser as well as any modifications, alterations, additions or omissions in deviation to these Export Conditions shall be binding upon ND SatCom only if and as far as confirmed by ND SatCom in writing.

1 VALIDITY OF OFFER AND CONTRACT

The validity of the contract itself is subject to the approval of competent Government authorities and, where appropriate, the obtaining of coverage of the national export credit insurance. The Purchaser shall undertake to furnish all necessary local permits and clearances in due time.

2 DELIVERY TERMS

Unless otherwise agreed, the delivery of equipment shall be performed EX WORKS, Immenstaad, Germany according to Incoterms 2010. Incoterms 2010 shall also be applicable to any other agreed delivery type.

3 SCOPE OF DELIVERY

Deliveries shall be made according to the agreed technical specification. In case and so far as no such technical agreement exists deliveries shall be made according to ND SatCom's offer, and - in this order of priority - to the Purchaser's technical specification of the request for proposal, if any. In the event, a detailed specification will be agreed during the performance of the contract, such detailed specification shall prevail.

4 SERVICES

- 4.1 Services to be performed by ND SatCom shall be rendered according to the service schedule
- 4.2 If services are to be rendered at the Purchaser's premises or on site, access to site or the Purchaser's premises wherever the services have to be performed, and - if so required by the contract - assistance by the Purchaser's personnel shall be afforded to ND SatCom within and at the stipulated time and in a suitable manner. Notwithstanding the extension of the performance period, any delay or interruption thereof shall be at the Purchaser's account and responsibility, especially but not limited to additional costs for extended stay or stand-by of ND SatCom's personnel, increase of labour costs and extra travelling costs, which shall be reimbursed by the Purchaser.
- 4.3 If payment for services is not effected according to the stipulation of the contract, ND SatCom shall be entitled to retain or interrupt the performance of service until such payment has been effected, Clause 4.2 above shall apply accordingly.
- 4.4 Training services for the Purchaser's personnel, if any, will be performed by ND SatCom according to the stipulated programme; they will be subject to the qualification of the Purchaser's personnel. If the training is executed in the Purchaser's country, the Purchaser shall be responsible for the availability of suitable class rooms and facilities. If the training is executed in Germany, travelling costs and living expenses of the Purchaser's personnel shall be borne by the Purchaser.
- ### 5 PERFORMANCE OF THE CONTRACT
- 5.1 All work will be performed in accordance with the provisions of the contract.
- 5.2 With respect to research and/or development work, if it is entirely or partially called for by the contract, ND SatCom shall meet its obligations for such work by observing the principle of clause 5.1 above and endeavouring to achieve the best possible result within the frame of the stipulated price. ND SatCom shall not be liable for a certain economic result

- 5.3 ND SatCom shall also be entitled to perform its obligations under the contract via sub-contractors of its choice.

6 PRICES

- 6.1 All prices are calculated on the condition that the performance of the contract can be carried out within the stipulated periods and times.
- 6.2 If ND SatCom's performance is delayed due to reasons the Purchaser is responsible for, ND SatCom shall be entitled to a reasonable price increase in order to cover thereof resulting price increases including but not limited to extra storage, material and labour costs.

7 PAYMENT TERMS

Unless otherwise agreed between the parties in writing, all payments of the equipment and services shall be effected in EURO (€) by means of an irrevocable, transferable and divisible Letter of Credit equal to the total price of contract, to be opened in favour of and at no cost to ND SatCom within 30 (thirty) days from contract signature, or, if no formal contract signature is required, from ND SatCom's written order confirmation, and to be confirmed by a first class German bank, which will be advised by ND SatCom upon receipt of the order. This Letter of Credit shall permit transshipment and partial shipments and shall be payable in the Federal Republic of Germany with the confirming bank as follows:

- a. For deliveries
The total price for the equipment shall be paid
50 % thereof as advance payment;
50 % thereof against presentation of forwarder's certificate of receipt pro rata deliveries effected.
- b. For services

The total price for services to be rendered shall be paid
50 % thereof as advance payment;
50 % thereof upon completion of the services against presentation of the respective invoice.

8 PERFORMANCE PERIODS AND DATES

- 8.1 The performance periods shall start from the latest of the following dates:
- a. Receipt of the above described Letter of Credit, if required;
- b. Receipt of the agreed down payment, if required;
- c. Coming into force of the contract.
- If fixed calendar dates for the performance periods are agreed between the parties, these dates shall be adapted accordingly if
- the above described Letter of Credit has not been received by ND SatCom within the above stipulated time, or - if no Letter of Credit is required -
 - ND SatCom has not received the agreed down payment,
- 8.2 Compliance with the agreed performance periods and dates is subject to clarification of all technical and commercial conditions. Performance periods and dates shall be extended for the period of delay, whenever a delay is due to late clarification, late receipt of clearances required or of documents and permits, machinery or tools to be furnished by the Purchaser, or to an act or omission of the Purchaser, or to Force Majeure as defined in Clause 11 hereunder.

9 ACCEPTANCE

- 9.1 In case an acceptance of the equipment and/or services is required the Purchaser shall accept the respective equipment and service according to this clause 9.
- 9.2 The Purchaser shall issue an Acceptance Certificate as soon as the equipment and/or service have been delivered and, if called for by the contract, installed in accordance with the therefore agreed specifications. In case of partial delivery the Purchaser shall accept such partial deliveries correspondingly.
- 9.3 If according to the contract acceptance is subject to an acceptance test, such test shall be performed according to the agreed test procedures and within 15 (fifteen) days after ND SatCom's notice to the Purchaser that the equipment and/or service are ready for acceptance. If no test procedure has been agreed ND SatCom's standard tests shall apply.
- 9.4 Defects which do not substantially jeopardise the performance of the equipment and/or service ("Irrelevant Defects") shall not entitle the Purchaser to refuse issuing the Acceptance Certificate.
- 9.5 Where acceptance test or issuing of the Acceptance Certificate is delayed for more than 15 (fifteen) days due to reasons ND SatCom is not responsible for, the equipment and/or services shall be deemed to be accepted. ND SatCom will notify the Purchaser about the effect of such delay in its notice to the Purchaser that the equipment and/or service are ready for acceptance.

10 FACTORY TEST

- 10.1 It is at the Purchaser's option to participate in a factory test prior to shipment with respect to equipment manufactured by ND SatCom. Unless otherwise agreed, the ND SatCom standard test procedure for such equipment shall apply. If a factory test is expressly agreed in writing, ND SatCom shall inform the Purchaser in due time. The factory test shall be carried out on a no delay/no interference basis, and the Purchaser's personnel shall be subject to ND SatCom's work and safety regulations. Upon successful factory test, the Purchaser shall issue and sign the respective factory test certificate.
- 10.2 In case the parties agreed to perform a factory test and provided ND SatCom has informed the Purchaser in due time and the Purchaser did not participate in such test ND SatCom shall carry out the factory test without the Purchaser, and issue and sign the respective factory test certificate instead of the Purchaser upon successful test inspection and proceed with shipment.

11 DELAY, LIQUIDATED DAMAGES, FORCE MAJEURE

- 11.1 In the event ND SatCom is responsible for a delay of acceptance (Clause 9), or if no acceptance is required, of delivery, the Purchaser shall be entitled to claim liquidated damages in the amount of 0.5 (zero point five) percent of the value of the delayed equipment for each complete week of delay up to an aggregate maximum of 5 (five) percent of such value. Liquidated damages shall be conclusive and in lieu of all other claims resulting from delay. This limitation shall not apply in case of intent or gross negligence of the contract. The Purchaser's legal option to terminate the contract for delay, ND SatCom is responsible for, is not limited herewith.
- 11.2 Events of Force Majeure which prevent ND SatCom to fully or partially meet its obligations under the contract shall extend the performance periods or postpone the respective dates to the extent which is necessary to overcome the consequences of these events provided the beginning and the end of Force Majeure cases have been advised to the Purchaser by registered letter or fax not later than 15 (fifteen) calendar days after the beginning and end respectively has become known to ND SatCom.
- 11.3 Events of Force Majeure shall be but not limited to acts of God, catastrophic phenomena, fire, flood, earthquake, epidemics, war (whether declared or not), revolution, terrorist activity, civil disorder, governmental acts, labour dispute or other reasons beyond ND SatCom's reasonable control.
- 11.4 If Force Majeure events last accumulatively for more than 6 (six) months, ND SatCom shall be entitled to terminate the contract and shall be paid pro rata for work performed, deliveries made and services rendered up to the time of termination.

12 DOCUMENTATION

- 12.1 All documentation supplied to the Purchaser shall be in English. ND SatCom shall retain all intellectual property rights including but not limited to copyright in ND SatCom's tender and all associated drawings, illustrations and other documentation. This documentation shall neither be duplicated nor made accessible to any third party; the same shall apply to the use of this documentation for the purpose of processing, manufacture or delivery. If a contract is not awarded this documentation shall be returned within 10 (ten) working days or immediately destroyed thereafter if return was not requested by ND SatCom within this period.

13 WARRANTY AND LIABILITY

- 13.1 Subject to the provisions below, ND SatCom warrants that during the warranty period the delivered equipment is free from defects existing at the time of acceptance and where no formal acceptance is required, at the time of delivery, provided the equipment is maintained, serviced and stored according to ND SatCom's instructions. In the event during the warranty period such a defect is detected, the Purchaser shall send the fault description to ND SatCom in order to analyse the defect.
- 13.2 The warranty period shall be 12 (twelve) months from Acceptance (Clause 9), or, where no formal Acceptance is required, from the delivery of equipment. The warranty above sets out the full extent of ND SatCom's warranty, and is in lieu of all other warranties, whether express or implied, statutory or otherwise.
- 13.3 The Purchaser has to notify all defects without undue delay.
- 13.4 The warranty has to be performed "EX WORKS (Incoterms 2010). The place of performance of the warranty is the place of business of ND SatCom, Graf-von-Soden-Straße, 88090 Immenstaad. The Purchaser has to pay all costs for the transport and has to bear the risks for loss and transport damages.
- 13.5 ND SatCom shall - at its option - replace or repair the defective part of the equipment.

- a. If ND SatCom's choice is to repair the defective part of the equipment, it is at option of ND SatCom to choose between the repair of the defective part on site or the removal of the defective part from the equipment by the Purchaser in accordance with any thereto relating documentation. The Purchaser has to send the defective part to ND SatCom from the Purchaser's facilities in compliance with ND SatCom's RMA procedure which is published on www.ndsatcom.com/en/support/repaircenter.php. ND SatCom will return the repaired part from ND SatCom facilities to the Purchaser and the Purchaser shall reinstall the repaired part in accordance with any documentation relating thereto.
- b. If ND SatCom's choice is to replace the defective part of the equipment, ND SatCom will send a new part to the Purchaser. The Purchaser shall remove the defective part and install the new part in accordance with any documentation relating thereto. Furthermore upon request of ND SatCom the Purchaser shall return the defective part to ND SatCom on CIP-Basis (Incoterms 2010) for disposal.

- 13.6 In case any equipment stated defective by the Purchaser and sent back to ND SatCom for repair is found to be not defective according to clause 13.1 upon examination of ND SatCom, ND SatCom shall be entitled to an analyzing fee in the amount of Euro 500 (five hundred).
- 13.7 The Purchaser shall at its risk and expense collect equipment which was stated defective and was not defective from ND SatCom's facilities no later than 5 (five) days after receipt of ND SatCom's respective request. In case ND SatCom chose to repair equipment stated defective by the Purchaser on site according to clause 13.2 and the respective equipment is found to be not defective according to 13.1 upon examination of ND SatCom the Purchaser shall reimburse ND SatCom the travel costs incurred for travelling on site.
- 13.8 With respect to Irrelevant Defects, the Purchaser's rights are excluded.
- 13.9 The Purchaser's right to substitute performance shall be excluded.
- 13.10 If ND SatCom fails to replace or repair the defective equipment in accordance with clauses 13.2 within reasonable time, then the Purchaser is free - after a reasonable period of grace to be granted to ND SatCom - to devaluate the defective equipment to the degree of its inferiority and claim reimbursement to this extent or to withdraw from the contract. For repairs performed and parts replaced, ND SatCom warrants to the same extent as for the original equipment, but only to the end of the warranty period applicable to the original equipment.
- 13.11 In the event a defect of equipment is due to incorrect removal or installation performed by the Purchaser under the instructions of ND SatCom or according to the thereto relating documentations, ND SatCom shall remedy such defect in compliance with this Clause provided that ND SatCom's instructions or the documentation were incorrect.
- 13.12 ND SatCom warrants in the case of infringement of any patents or any other intellectual property rights registered within the European Community on or before the delivery of the equipment arising out of the use of the equipment supplied under the contract as follows:
- a. At its option and cost ND SatCom will obtain a license of the infringed intellectual property right at fair and reasonable conditions or modify the equipment supplied for any infringement will be avoided in future.
- b. If ND SatCom fails to avoid the infringement as mentioned above within reasonable time, then the Purchaser is free - after a period of grace to be granted to ND SatCom - to devaluate the equipment to the degree of its inferiority and claim reimbursement to this extent or to withdraw from the contract.
- 13.13 If the country of destination agreed between the parties is a country outside the European Community, ND SatCom warrants in the case of infringement of any patents or any other intellectual property rights registered within this country on or before the delivery of the equipment arising out of the use of the equipment supplied under the contract as stated above under clause 13.12 a and b.
- 13.14 All kinds of claims for damages based on whatever cause in law against ND SatCom and/or its directors, officers, employees and persons whom ND SatCom employs to perform its obligations are excluded. This restriction shall not apply for
- a. negligently or wilfully caused damages to life, body or health
- a. damages arising out of wilful or gross negligent acts or omissions
- b. Damages caused negligently or wilfully by breaching essential contractual obligations (Kardinalpflichten). In the event such a breach is caused by slight negligence the liability is limited to the damage which is intrinsic to the contract and which was foreseeable by ND SatCom when concluding the contract.

- c. All other damages ND SatCom is liable for by mandatory legal provisions, in particular the German Product Liability Act.
- 13.15 In the event of a slightly negligent breach of essential contractual obligations (Kardinalpflichten), ND SatCom and/or its directors, officers, employees and persons whom ND SatCom employs to perform its obligations shall not be liable for any loss of profit, loss of savings, incidental or consequential damages.
- 13.16 If ND SatCom and/or its directors, officers, employees and persons whom ND SatCom employs to perform its obligations is liable for the loss or the destruction of data within the scope of 13.14 and 13.15 this liability is limited to the extent that the thereof resulting damages could not have been avoided had the Purchaser performed reasonable prevention efforts, in particular regularly backed up his data.
- 14 INTELLECTUAL PROPERTY RIGHTS**
- 14.1 ND SatCom will grant to the Purchaser a non-exclusive, royalty-free, revocable (as per sub clause 14.2 below) right to use the software embedded in the delivered hardware in connection with the respective hardware and for the purpose which it is designated for by ND SatCom. The Purchaser shall not be entitled to reproduce, modify or supplement the programmes or any part thereof, unless this is provided for in section 69d. Para. 2 and 3 or in section 69e of the German Copyright Act (Urheberrechtsgesetz). If a "gradual activation" of embedded software is agreed upon, ND SatCom will grant to the Purchaser this right of use only for the respective grade/level of software activated. Activation may be initialised by ND SatCom via internet (remote modus) upon request by the Purchaser and receipt of the respective payment. ND SatCom reserves the right to modify any parts of software not activated unless and in so far as the Purchaser placed a request of a gradual activation. Each gradual activation shall be governed by these Export Conditions. The Purchaser shall be entitled to sublicense above defined right of use on identical terms.
- 14.2 This license shall only be revocable with respect to equipment which is used by the Purchaser or any third Party outside the aforementioned purpose and any therefore granted sublicense shall be under the resolutive condition of the revoke of ND SatCom.
- 14.3 ND SatCom and/or its suppliers shall retain ownership of all intellectual property rights and ND SatCom only grants to the Purchaser the license defined under this clause 14.
- 15 RETENTION OF TITLE**
- 15.1 Title to the equipment provided under the contract shall pass to the Purchaser only upon full payment of all amounts due to ND SatCom. The Purchaser is allowed to sell the equipment in the normal course of business provided that the Purchaser himself retains title to the products upon full payment by a party buying the equipment from the Purchaser.
- 15.2 The Purchaser herewith cedes to ND SatCom all claims for reimbursement resulting from this resale of equipment. The Purchaser is entitled to invoice and collect these amounts due on behalf of ND SatCom.
- 16 PERMITS, VISAS etc.**
- 16.1 Notwithstanding the Purchaser's duties according to Incoterms, the Purchaser shall be responsible for timely obtaining of local permits, type approvals, or homologations of any kind, if necessary in the Purchaser's country and/or any other country, for the installation, implementation and use of the equipment to be delivered under the contract.
- 16.2 The Purchaser shall assist in obtaining all work permits and visas for ND SatCom's personnel necessary to render the services hereunder in the Purchaser's **count**
- 17 TAXES**
- 17.1 The Purchaser shall pay any and all taxes and imposts of any nature whatsoever levied, save for taxes imposed upon or measured by ND SatCom's income in Germany.
- 17.2 If any taxes are required to be withheld from amounts payable to ND SatCom, or to the extent ND SatCom is required to pay or actually pays any taxes or imposts in the first instance, any amounts payable to ND SatCom by the Purchaser shall be increased so that ND SatCom receives the amount it would have received had no taxes been imposed or actually paid.
- 18 APPLICABLE LAW AND ARBITRATION**
- 18.1 These Export Conditions and the contract shall be governed and interpreted in accordance with the laws of the Federal Republic of Germany with exception of the German rules on conflicts of law. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.
- 18.2 All disputes arising out of or in connection with these Export Conditions or the contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. Place of Arbitration shall be Zurich, Switzerland. Arbitration language shall be English. ND SatCom shall have the right to file suit at the regular court of the Purchaser's domicile as far as no arbitration is pending with respect to the subject of the law suit.
- 19 MISCELLANEOUS**
- 19.1 Notwithstanding its responsibility, ND SatCom shall be entitled to transfer the contract or parts thereof to any of its affiliated companies. Apart from that neither ND SatCom nor the Purchaser shall be entitled to transfer the contract or parts thereof to any third party without prior written consent of the other party.
- 19.2 The Purchaser shall either dispose any equipment no longer needed in a responsible manner or may return the equipment (at the Purchaser's cost) to ND SatCom for recycling/disposal.
- 19.3 The Purchaser shall treat all technical and commercial information provided by ND SatCom, which is not in the public domain, as confidential information and shall use this information only for the purpose of the business relationship.
- 19.4 In the event that a provision of these Export Conditions or the contract is held to be invalid, inapplicable or unenforceable the remaining provisions of these Export Conditions shall be unimpaired. The Purchaser and ND SatCom agree to replace the invalid, inapplicable or unenforceable provision with a valid provision which comes as close as possible to the business purpose of the invalid, inapplicable or unenforceable provision.
- 19.5 All amendments or supplements to these Export Conditions and the contract, including to this provision, shall be in writing, unless notarization or any other stricter form is required by law.

ND SatCom GmbH
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