



**General Purchase Conditions of ESG Elektroniksystem und Logistik GmbH**  
**(hereinafter referred to as "ESG")**  
**effective 01.08.2007**

THIS DOCUMENT IS A TRANSLATION OF THE GERMAN TEXT, BEING PROVIDED FOR THE SAKE OF CONVENIENCE ONLY AND HAVING NO EFFECT ON THE CONSTRUCTION OR INTERPRETATION OF ANY TERMS OR CONDITIONS OF THE CONTRACT, WHICH SHALL BE CONSTRUED EXCLUSIVELY BY REFERENCE OF THE GERMAN TEXT, WHICH CONTAINS THE ONLY RELEVANT WORDING EITHER FOR THE DETERMINATION OF ANY DISPUTES OR OTHERWISE.

A COPY OF THE GERMAN TEXT EFFECTIVE AUG. 1st, 2007 IS AVAILABLE ON REQUEST.

<b>1</b>	<b>General</b>	<b>3</b>	<b>Furnished materials/ research and development results</b>
	<p>All ESG orders (as well as delivery and service call-offs under skeleton contracts) for deliveries and services shall be governed exclusively by the special conditions set forth therein, with these General Purchase Conditions playing only a subordinate role. The Contractor's general terms and conditions of business shall not be or become part of the contract, even if ESG has not expressly objected to them in each individual case or the Contractor has declared that he is willing to deliver only subject to his own terms and conditions.</p>	3.1	<p>Materials and objects of any kind furnished by ESG shall remain the sole property of ESG. To the extent that the materials and objects furnished to the Contractor are processed or transformed and thus turned into a new movable object by the Contractor, ESG shall be deemed to be the sole manufacturer within the meaning of § 950 German Civil Code. If materials and objects furnished by ESG are joined or blended with other materials and objects such that these can no longer be separated, ESG shall be entitled to co-ownership in the newly created object pro rata of the value the objects had at the time they were joined or blended. If materials or objects furnished by ESG are joined or blended with material or objects provided by the Contractor himself in such proportion that the result may be regarded as being primarily the property of the Contractor, it shall be deemed to have been agreed that the Contractor confers co-ownership pro rata the value of the input by ESG, and the Contractor shall retain custody of property co-owned by ESG. Insofar as objects are developed or manufactured by the Contractor with substantial participation on the part of ESG (tests, etc.) or are produced by the Contractor to ESG specifications or are paid for in full by ESG, they may be used only for the purposes pertaining to the ESG order. If such objects are ESG's property, they shall be returned to ESG without delay "carriage and insurance paid to ESG in Munich" at ESG's request. The Contractor shall bear the risk concerning transportation, loss and damage with regard to materials and objects furnished by ESG.</p>
<b>2</b>	<b>Orders/amendments</b>		
2.1	<p>Supply contracts (order and acceptance of order) as well as changes of or amendments to supply contracts shall be made in writing. The enclosed preprinted ESG order acknowledgement form shall invariably be used to confirm acceptance of ESG orders. Verbal declarations or agreements shall require ESG's written confirmation to be valid.</p>		
2.2	<p>If the Contractor fails to accept an order within two (2) weeks of the date of the order, ESG shall no longer be bound by the order. The Contractor shall be bound to deliver if he does not object to delivery and service call-offs within one (1) week of the date of the delivery/service call-off.</p>		
2.3	<p>Within the limits of what can be reasonably expected of the Contractor, ESG may request modifications to the design and/or execution/manufacture of the services/deliverables, in which case a fair agreement shall be reached concerning the consequences such modifications entail, particularly with regard to cost increases or reductions as well as with regard to delivery dates.</p>	3.2	<p>The Contractor undertakes to carry out any maintenance or inspection work that may be required on objects furnished by ESG and to take out adequate insurance cover for them - especially for transports to and from third parties - at Contractor's own costs, and to provide evidence thereof if called upon by ESG to do so</p>
2.4	<p>The Contractor undertakes to notify ESG without delay and in writing of any planned changes in the composition of the material being processed, in the design and/or execution/manufacture as compared with deliveries or services of the same kind previously made to ESG. Any such changes are subject to ESG's written consent.</p>	3.3	<p>If the deliverables have been developed solely by ESG or developed, adapted, tested or assessed jointly by the Contractor and ESG, the deliverables, or component parts thereof, may not be supplied to third parties without ESG's prior consent. The same shall apply to deliverables that have been developed solely by the Contractor but have been paid for by ESG.</p>
2.5	<p>The Contractor shall ensure that the deliveries and services provided comply with environmental, accident prevention and other health and safety regulations, as well as the safety engineering regulations and all legal requirements applicable in the Federal Republic of Germany and/or the European Union and the place of performance. Furthermore, the Contractor shall notify ESG of any special, not generally known handling and disposal arrangements that may be required in connection with any delivery or service.</p>	3.4	<p>To the extent the order covers research or development work, ESG shall be granted an exclusive, irrevocable and transferable right to use any and all results of such work, including drawings, documents in electronic form, computer programs and technical documents, this right being free of charge, unrestricted in space and time and applicable to all types of uses.</p>
		<b>4</b>	<b>Secrecy</b>
		4.1	<p>The Contractor and ESG undertake to treat as trade secrets all non-overt commercial and technical details that become known to them in the course of their business relations.</p>
		4.2	<p>Technical documents, drawings, models, templates, samples and similar objects shall not be placed at the disposal of or made otherwise accessible to unauthorised third parties. The duplication/reproduction of such objects is permissible only within the limits of internal requirements and the terms of copyright.</p>

**5 Subcontracting**

The placement of subcontracts is subject to ESG's prior written consent; the subcontractors shall be expressly obligated to comply with the requirement to maintain secrecy as set out in Section 4.

**6 Delivery dates/shipment/pricing**

6.1 The date the delivery is received at the destination specified by ESG shall be decisive in determining that deliveries not involving assembly or installation work have been delivered in due time. The date the delivery or service is made available in a condition for acceptance shall be decisive in determining that deliveries involving assembly or installation work or services have been delivered in due time.

6.2 The dates and deadlines for the provision of the Contractor's deliveries and services may be postponed by ESG by up to four (4) months maximum if ESG's envisaged requirement of such deliveries/services is delayed by strikes or stoppages of another kind. ESG shall inform the Contractor in due time of the circumstances compelling the change in delivery and completion dates. The Contractor undertakes to provide the delivery/service in line with the changed delivery or performance dates postponed within the above mentioned time frame.

6.3 All relevant documents such as delivery notes, certificates, billing invoices etc. must be placed in a shipping envelope and attached to the outside of the cartons/crates. The delivery note shall state ESG's order number, buyer number, delivery note number and delivery date as well as the date of dispatch, type of packaging, identification of goods, quantity and weight of the consignment as well as the destination (address of the unloading point and factory), in addition the ESG order number shall be stated in barcode (type BC 39).

6.4 The place of performance for deliveries or services provided by the Contractor shall be the receiving point stated in the order. If no such receiving point is stated in the order nor is self-evident from the nature of the delivery/service in question, the place of performance shall be taken to be ESG's company headquarters.

**7 Delay in delivery/force majeure**

7.1 In the event of default on the part of the Contractor, ESG shall be entitled, without prejudice to the statutory claims, to demand a penalty equivalent to 0.5 percent of the value of the order for the parts delayed, or of the value of the order for the services delayed, for each week commenced up to a maximum of eight (8) percent of the order value. ESG shall have the right to claim the penalty also in the event that ESG reserves the right to claim penalties until no later than the end of one month after acceptance of the last delivery/service due under the order.

7.2 Cases of force majeure release the contractual partners of their contractual duties for the duration of the disruption, with due regard of its effects. This shall likewise apply if such circumstances occur at a time when the contractual partner affected is in default. The contractual partners undertake, within the limits of what can be reasonably expected of them, to provide the necessary information without delay and to adjust their obligations to the changed circumstances in good faith. In the event the contractor is prevented from performing his duties for more than one month as a result of force majeure, either party shall have the right to withdraw from the contract in full or in part.

**8 Invoice and payment/no assignment**

8.1 The invoice shall be made out in duplicate and shall state ESG's order number and item number as well as the date of dispatch, identification of the goods, quantity and weight of the consignment as well as the VAT identification number for intra-community transactions within the European Union for each delivery and service. It shall be sent separately through the postal services.

8.2 Unless otherwise specified in the order, the payment shall be effected by remittance or cheque, but in no event by c.o.d. The date on which a cheque is sent shall be deemed to be decisive for determining whether payment has been effected within the period allowed for payment. Value-added tax treatment and all other tax obligations shall be governed by the applicable tax laws.

8.3 Unless otherwise specified in the order, payment shall be due 60 days after the delivery was effected and/or service performed in compliance with the contract and the invoice was received. ESG shall have the right to deduct a 3% discount if payment is effected within 14 days after the delivery was effected and/or service performed in compliance with the contract and the invoice was received and the right to deduct a 2% discount if payment is effected within 30 days after the delivery was effected and/or service performed in compliance with the contract and the invoice was received. ESG shall be entitled to deduct this discount also whenever ESG offsets payments or withholds payment of a reasonable amount pending the rectification of defects; the period allowed for payment shall commence after all defects have been remedied. Payment on the part of ESG shall not be deemed to constitute acceptance of the deliveries and/or services as conforming to the contract. In accordance with the terms of payment, any invoices covering partial quantities or partial services delivered in advance shall not be due and payable before the last item delivered as per the delivery schedule becomes due for payment, subject to complete, defect-free performance of all deliveries and/or services. Any discounts agreed upon shall be deducted from the total amount invoiced.

8.4 Without prior written consent, which may not be unreasonably withheld, the Contractor shall not have the right to assign to third parties any claims he has vis-à-vis ESG or to have them collected by third parties. In the event of extended reservation of proprietary rights agreements and assignments to companies in which ESG hold a direct or indirect stake of more than 50 percent, approval shall be deemed to have been granted.

In the event the Contractor, notwithstanding clause 1, assigns his claims vis-à-vis ESG to a third party without having obtained ESG's approval, the assignment shall be nevertheless valid. But ESG, at its discretion, can effect payment either to the Contractor or to the third party, thus having discharged its obligations.

**9 Quality management**

The Contractor shall provide for a suitable quality assurance and control system and shall comply with any quality specifications called out in the order. The fact that ESG operates a quality assurance and receiving inspection system of its own does not relieve the Contractor of his contractual obligations.

**10 Defects in quality and defects in title**

10.1 The Contractor shall warrant that his deliveries and services remain free from defects in quality and in title for a duration of two years from the day of the passing of the risk, unless statutory provisions stipulate longer limitation periods, as for instance for buildings or objects that go into buildings. In the event of a resale, the period of limitation for claims due to defects in quality shall be two years from the day of the passing of the risk to the end customer, but shall in any event end no later than 36 months from the date of the passing of the risk from the Contractor to ESG.

10.2 The deliveries and services shall in particular be provided by using the best suitable and flawless material, shall conform to any applicable statutory/official provisions and to the state-of-the-art current at the time of contract performance, even if this standard has not yet been incorporated in the engineering standards and specifications applicable to the services/deliveries of the Contractor at the place of performance.

- 10.3 ESG will inspect deliveries for defects in quality within a reasonable period of time. The notification of defects shall be deemed to have been filed in good time provided it is filed to the Contractor within two weeks from the detection of the defect in quality. The date the notification is sent to the Contractor shall be decisive for determining whether the complaint has been filed within the period of time allowed.
- 10.4 In the event of defects in quality or defects in title, ESG shall be entitled to the full statutory claims and rights. In particular, the Contractor shall bear all expenses associated with the discovery and rectification of the defect(s), including those incurred at ESG, the costs of investigations, costs incurred up to the time the defect was discovered at ESG, disassembly and assembly costs, costs of labour and materials and transportation and other costs for the return of the defective and supply of non-defective items. This shall apply also to the extent the expenditures increase as a result of the consignment being taken to some place other than the place of performance.
- 10.5 In the event of undue delay, failure or refusal by the Contractor to rectify the defect (rectification or supply of replacement) ESG, without prejudice to its legal claims, shall have the right to rectify or have the matter rectified and charge the costs on to the Contractor. ESG shall be entitled to consider the Contractor to have failed if the first attempt to rectify the matter is unsuccessful. Irrespective thereof, after having notified the Contractor, in urgent cases ESG shall be entitled to rectify or have the matter rectified and the Contractor shall reimburse ESG the costs saved by him as a result.
- 10.6 The period of warranty for deliverables or services rectified or replaced by the Contractor shall be 12 months from the time of rectification/replacement; the period shall, however, in no event end prior to expiry of the period of limitation agreed for the original de-livery/service.

#### 11 Violation of third-party proprietary rights/insurance

- 11.1 The Contractor shall indemnify and hold ESG harmless, irrespective of his or ESG's potential knowledge, from any claims and, upon first request, agrees to pay for all damage, costs or expenditures incurred by ESG as a result of the violation of proprietary rights of third parties with respect to the deliverables/services rendered. This shall not apply if proprietary rights are violated by ESG sample drawings or other ESG specifications. The Contractor shall be liable for the violation of foreign proprietary rights and proprietary right applications only if at least one of the family of proprietary rights has been published either in the home country of the Contractor, by the European Patent Office or in the U.S.A.
- 11.2 The Contractor shall be obligated to take out appropriate employer's liability insurance and product liability insurance cover and to provide ESG with proof of such insurance coverage upon request. Upon request, the Contractor shall assign his claims vis-à-vis the insurance company to ESG.

#### 12 Right of withdrawal from contract/termination

In the event that there is a deterioration in the asset or credit situation of either contractual partner strong enough to put the proper performance of the contractual obligations at a major risk, in particular if insolvency proceedings over its assets have been initiated, the other party shall have the right to withdraw from the part of the contract that has not been performed or to terminate the contract.

#### 13 Stocks of parts/ability to supply

The Contractor shall guarantee an adequate stock level of parts/his ability to supply for the normal service life of his deliveries/services, but at least for the duration of 10 years as from performance. Even if such an obligation no longer exists with regard to deliveries/services rendered to ESG, the Contractor shall inform ESG in such good time of the intended discontinuation of the stocking of parts/his ability to supply that parts can still be supplied to ESG for ESG's own stocking of parts.

#### 14 General provisions

- 14.1 The contract shall be governed by the law of the Federal Republic of Germany to the exclusion of the German conflict of law rules. The United Nations agreement on the international sale of goods dated April 11, 1980 shall be excluded. Munich shall be the sole place of jurisdiction regarding any and all disputes arising from the business relationship.
- 14.2 The place of performance for goods and services is ESG in Munich, Germany.