

# ASTRIUM

## ASTRIUM TERMS AND CONDITIONS OF PURCHASE

### 1) DEFINITIONS

In these terms and conditions (hereinafter "Conditions") and in all documents related to this Order:

**"The Purchaser"** means Astrium Limited, whose registered office is at Gunnels Wood Road, Stevenage, Hertfordshire SG1 2AS, England.

**"Supplier"** means the person, firm or company with whom the Order is placed.

**"Data"** means all designs, drawings, specifications, proprietary information, trade secrets and other Intellectual Property.

**"Intellectual Property"** means technical information and data of all kinds, whether subject to statutory protection or not, including but not limited to inventions, drawings, designs, computer software (source and object code), technical data package, test results, manufacturing information, know how and trade secrets or other confidential or proprietary information.

**"Intellectual Property Rights"** means patents, patent applications, registered and unregistered designs, copyright, trade marks and other forms of statutory protection conferring rights in industrial or intellectual property, as well as rights arising as a result of the application of the laws of confidentiality or contracts, where appropriate, to trade secrets and unpublished know-how.

**"Order"** means this purchase order and any amendment thereto including these Conditions, duly signed on behalf of the Purchaser

**"Specification"** means the technical requirement and/or description of the Supplies and/or the Supplier's proprietary specification defined in the Order.

**"Supplies"** means all articles, materials, work or services which are the subject of the Order.

### 2) APPLICATION

These Conditions are an integral part of the Order and shall apply except to the extent that they may be inconsistent with any special conditions agreed to appearing on the face of or otherwise incorporated in the Order, which shall have precedence over these Conditions. This Order shall constitute the entire agreement between the parties and shall supersede all previous communications or representations between the parties including any standard selling conditions issued by the Supplier. This Order shall not be varied except with the written consent of the Purchaser.

### 3) ORDER ACCEPTANCE

The Supplier shall confirm its acceptance of the Order to the Purchaser by signing a copy of the Order and returning it to the Purchaser, within 14 working days of the date of the Order or such other period as the Purchaser may agree in writing. Failure to do so will give the Purchaser the right to cancel the Order without incurring liability.

### 4) DELIVERY

- i) Delivery shall be strictly in accordance with the Order and at the Supplier's risk and expense.  
The Purchaser shall have the option to terminate the Order wholly or in part without liability where delivery is not made on the date specified, without prejudice to any other right or remedy which the Purchaser may have.
- ii) The Parties acknowledge that unauthorised delay in the delivery of the Supplies may cause loss to the Purchaser. Subject to Paragraph 4 i) above, in the event of the Supplier's failure to deliver the Supplies or any part thereof in accordance with the Order, the Purchaser may, without prejudice to any rights of termination available to the Purchaser, recover from the Supplier as agreed liquidated damages a sum equal to one percent (1%) of the Order value of the Supplies for each week or part of a week after the delivery date stated in the Order that the Supplies remain undelivered or until such time as the Purchaser exercises his/her right of termination under Paragraph 11(i) This total sum of such liquidated damages shall not exceed twelve percent (12%) of the Order value of the Supplies.
- iii) The Supplier shall not be liable for delays in delivery due to causes which the Supplier can show are

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beyond his reasonable control, unavoidable by exercise of reasonable commercial judgement and without the Supplier's fault or negligence, provided that it was not possible for the Supplier to establish work-around plans and the Supplier promptly notifies the Purchaser of any delay or anticipated delay as soon as it is known and resumes performance as soon as possible thereafter. If any such delay exceeds 28 days from the Purchaser's receipt of this notification, the Purchaser may cancel the Order without liability except in respect of Supplies delivered to the Purchaser prior to such cancellation. The Purchaser may suspend the performance of the Order or acceptance of deliveries in whole or in part during or after complete or partial stoppage of work at the Purchaser's premises by reason of factors outside the Purchaser's reasonable control including but not limited to acts of God, governmental actions, war or national emergency, acts of terrorism, fire, flood, protests, strikes lockouts or other labour disputes (whether or not relating to either party's workforce).

- iv) Where the Purchaser agrees in writing to accept delivery by instalments the Order shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment shall entitle the Purchaser at its option to treat the whole Order as repudiated.
- v) If the Supplies are delivered to the Purchaser in excess of the quantities ordered the Purchaser shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense

## 5) PACKAGING AND DOCUMENTATION

- i) All Supplies must be properly and securely packed so as to be adequately protected against deterioration or damage in transit.
- ii) The reference number of the Order shall be quoted on all packaging, documents and correspondence including Advice Notes, Invoices and required Certificates.
- iii) If the Supplier requires the Purchaser to return any packaging material or containers to the Supplier that fact must be clearly stated on any delivery note delivered to the Purchaser and any such packaging material or containers shall only be returned to the Supplier at the cost and risk of the Supplier.

## 6) QUALITY PROCEDURES

- i) The Supplies shall be subject to quality assurance conditions identified on the face of the Order.
- ii) All Supplies must be identified with the appropriate part and issue number and any necessary process treatments must be carried out unless stated otherwise in the Order.  
The Purchaser's representatives and the representatives of any other organisation on the authority of the Purchaser shall be allowed to visit the Supplier's premises and those of its permitted sub-contractors and shall be afforded all necessary facilities at any reasonable time to check the progress or quality of the work on the Supplies.
- iii) Notwithstanding any inspection or testing, the Supplier shall remain fully responsible for the Supplies and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Order
- iv) If any of the Supplies fail to comply with the provisions set out in condition 6 the Purchaser shall be entitled to avail itself of any one or more remedies listed in condition 16.

## 7) ADVICE AND RELEASE CERTIFICATES

The Supplier shall send Advice Note(s) and such Certificate(s) of Conformity or such other document as may be required by the terms of the Order on the day of despatch of each consignment. One copy of the Certificate of Conformity or such other document as may be required shall accompany each consignment and a further copy shall be sent by post to the receiving department.

If the Supplier is a stockist, he shall provide copies of the original manufacturer's Certificate of Conformity or such order document as may be required together with test figures, heat treatment particulars and any other necessary information where applicable.

## 8) TITLE

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Unless otherwise agreed to in writing, title in the Supplies shall pass to the Purchaser upon delivery (including off-loading) at the Purchaser's premises, or such other designated delivery point detailed in the Order, provided that where advance or progress payments are made title but not risk shall pass to the Purchaser as soon as items are allocated to the Order. All items so allocated shall be adequately marked and recorded as being the property of the Purchaser.

## 9) PRICE

- i) Where prices have been agreed they shall be fixed and firm exclusive of VAT but inclusive of all other taxes, imposts, fees and duties; no alteration may be made to the price without the consent of the Purchaser in writing. Where prices are still to be agreed at the time the Order is placed, quotations shall be submitted by the Supplier and confirming amendments to the Order shall be issued by the Purchaser before invoices are rendered.
- ii) No charge shall be made for packing, insurance or delivery unless otherwise agreed and any such charge shall be separately detailed in the invoice.

## 10) INVOICES

- i) The Supplier shall invoice the Purchaser for the Supplies and shall submit an invoice to the Purchaser at the address shown in the Order after the despatch of Supplies. Each invoice shall quote the Order number, part and drawing numbers, description, quantities and weights of the Supplies.
- ii) All invoices shall state the price for the Supplies exclusive of Value Added Tax and show the amount of VAT (if any) separately.
- iii) Payment shall be made by the Purchaser to the Supplier within thirty (30) calendar days from the end of the month in which the invoice is submitted providing that the invoice is submitted in accordance with the Order. The Purchaser shall not be liable for any delay in payment resulting from the improper or incorrect submission of invoices.

## 11) TERMINATION

### i) For Default

In the event of a breach of any of the provisions of this Order or if the Purchaser reasonably believes that such breach is likely to occur, the Purchaser may give the Supplier notice of the breach. If the breach is capable of being remedied the Supplier shall rectify it within thirty (30) days of receipt of notice. If the Supplier does not rectify the breach, or if the breach is not capable of remedy, then the Purchaser may give notice to suspend or terminate the Order in whole or in part without incurring liability in respect thereof. The Supplier shall indemnify the Purchaser from and against any cost resulting from the termination or suspension of the Order.

### ii) For Insolvency

If the Supplier becomes insolvent or has a receiver or administrator appointed of its business or is compulsorily or voluntarily wound up or if the Purchaser reasonably believes that any such events may occur then the Purchaser shall have the right without prejudice to any other remedy to suspend the performance of or terminate the Order without incurring liability.

### iii) For Convenience

The Order may be terminated by the Purchaser at any time in whole or part by delivery to the Supplier of a notice of termination. In the event of such notice being given, the Supplier shall stop work forthwith and comply with any directions with regard to the Supplies that may be given by the Purchaser. The Supplier shall submit an account to the Purchaser at the address given in the Order within one (1) month from the effective date of termination in the form prescribed by the Purchaser. The Purchaser undertakes to pay a fair and reasonable price for all authorised work done and unique materials purchased up to the time of termination. Such payments made, taken together with any sums paid or due or becoming due to the Supplier under the Order shall not exceed the total price of the Supplies under the Order.

- iv) Termination of the Order for any reason shall not prejudice any rights or remedies which may have accrued to either party and both parties shall use all reasonable endeavours to mitigate their losses upon such termination.

## 12) INTELLECTUAL PROPERTY RIGHTS

- i) All Intellectual Property generated from or arising as a result of the work undertaken by the Supplier for the purpose of the Order shall vest in and be the absolute property of the Purchaser who reserves the right to

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protect the same by securing appropriate Intellectual Property Rights therein which Intellectual Property Rights shall vest in and be the absolute property of the Purchaser.

- ii) The Supplier hereby warrants that the Supplies and the intended use thereof do not infringe any third party Intellectual Property Rights whatsoever existing or pending at the date of the Order and hereby agrees to fully indemnify the Purchaser and the Purchaser's customers and/or users of the Supplies against any liability, damages or expenses whatsoever which may be incurred by or on behalf of the Purchaser and the Purchaser's customers and/or users of the Supplies as a result of any infringement or alleged infringement of any Intellectual Property rights belonging to third parties.

## **13) INDEMNITY AND INSURANCE**

- i) The Supplier agrees to indemnify the Purchaser against any and all claims, costs, damages, liabilities and expenses in respect of personal injury, death or loss of or damage to property and associated pecuniary loss (including all legal costs and penalties) caused by or resulting from the negligent acts or omissions of the Supplier, his sub-contractors, agents or suppliers in the performance of the Order, and/or from defective workmanship quality or materials in the Supplies and any and all claims arising out of an infringement or alleged infringement of any Intellectual Property Rights caused by the use, manufacture or supply of the Supplies
- ii) Where the Supplier is required to carry out work of any kind on the premises of the Purchaser or on such premises as the Order so directs, the Supplier shall effect public liability insurance of not less than £5,000,000 per event and procure that any sub-contractor to the Supplier effects similar insurance in respect of loss or damage to property or death or injury to persons resulting from or during the execution of the Order. Should such insurance policy cover a liability in excess of £5,000,000 then the Purchaser shall have the benefit of the full extent of the cover available.

## **14) SUPPLIER'S DOCUMENTATION**

The Supplier will promptly provide the Purchaser with all present and future instructions relating to the use, disposal and storage of Supplies and in particular draw attention to any dangers, hazards or restrictions currently known or arising in the future, associated with the supplies.

## **15) SUB-CONTRACTS BY THE SUPPLIER**

No work on the Order may be sub-contracted by the Supplier (except as is customary in the trade) nor shall the Order be assigned or otherwise transferred by the Supplier without the prior written consent of the Purchaser. All sub-contracts shall be the responsibility of the Supplier.

## **16) WARRANTY**

- i) The Supplier warrants that the Supplies conform to the quantity, quality and Specification stated in the Order, that they shall be fit for the purpose for which they are required, that they shall be of best quality, material and workmanship and subject to sub-paragraph (iv) are free from design or any other defect whether actual or latent.
- ii) If any Supplies upon delivery or acceptance or within 24 months thereafter (or such other period as may be agreed) do not conform to the Specification or the required standards of design, material, workmanship or quality or which are not of new manufacture or which are not in accordance with the samples approved by the Purchaser (hereinafter call "Defect") then the Purchaser shall be entitled at its discretion and without prejudice to any other remedy to exercise one or more of the following rights:
  - a) rescind the Order
  - b) Reject the Supplies in whole or in part and require the Supplier to credit the Purchaser with the cost thereof.
  - c) Give the Supplier the opportunity, at the Supplier's risk and expense to promptly remedy the defect in the Supplies or to replace the defective Supplies .
  - d) Claim such damages (including all the Purchaser's reasonable expenses and additional costs) incurred in connection with such Defect
  - e) refuse to accept any further deliveries of Supplies from the Supplier without incurring any liability,
  - f) carry out at the Supplier's expense any work necessary to make the Supplies compliant with the Order and any Specifications.

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- iii) Any and all warranties and service guarantees attaching to the Supplies shall be for the benefit of and enforceable by the Purchaser and for the benefit of and enforceable by the Purchaser's customers and/or users of the Supplies. The Purchaser's inspection, approval, acceptance, use of or the payment by the Purchaser for all or any part of the Supplies shall not effect any such warranty rights whether or not a breach of warranty had become evident at the time.
- iv) The Supplier shall not warrant a detailed design where such detailed design is provided by the Purchaser.
- v) The Purchaser's rights under these Conditions are in addition to any statutory conditions which may be implied in favour of the Purchaser under the Sale of Goods Act 1979.

## 17) CHANGES

The Purchaser may amend the Order by notice in writing and the Supplier shall introduce such amendment without delay. Within 14 days after receipt of notification of any change, the Supplier shall submit a statement to the Purchaser in such detail as the Purchaser may reasonably require of the effect of such change. The Purchaser and the Supplier shall agree upon any adjustment to the Order.

## 18) FREE ISSUE

- i) All Data, tools, patterns, materials and other equipment loaned by the Purchaser to the Supplier for use in connection with the Order shall be and will remain at all times the property of the Purchaser and be surrendered to the Purchaser upon demand in good and serviceable condition (fair wear and tear excepted) and are to be used by the Supplier solely for the purpose of completing the Order. Such supplies shall be at the risk of the Supplier and insured by the Supplier at the Supplier's own expense. The Purchaser does not warrant the adequacy of any tooling, Data, patterns, materials and other equipment it has furnished.
- ii) The Purchaser shall accept no liability for any parts or materials received by the Supplier from the Purchaser in a damaged state under or in connection with the Order unless such damage is notified in writing to the Purchaser within five days of the receipt by the Supplier of such parts or materials.
- iii) All scrap arising from material issued by the Purchaser shall remain the property of the Purchaser and must be disposed of by the Supplier in accordance with the instructions of the Purchaser and any relevant statutory regulations and all proceeds of sales of such scrap must be credited by the Supplier to the Purchaser, such instructions shall not however replace any statutory duty otherwise imposed on the Supplier.

## 19) CONFIDENTIALITY AND SECURITY

- i) The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Purchaser or its agents and any other confidential information concerning the Purchaser's business or its products which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Purchaser and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.
- ii) Where indicated within the Order that the Order is subject to UK national or other security restrictions, the Supplier shall comply with such restrictions.
- iii) Where required by the Purchaser, the Supplier shall give appropriate and agreed publicity to the award of the Order and will participate in other agreed related publicity initiatives. Other than provided above, the Supplier shall not make use of the Purchaser's name or any information contained in the Order or related documents without prior agreement.

## 20) NOTICES

- i) All notices and communications shall be in writing.
- ii) Any notice or other communications sent to the Supplier shall be sufficient if sent to an address notified to the Purchaser for the purpose.
- iii) Notices or other communications sent by the Supplier to the Purchaser shall be sent to the address given for the Purchaser on the face of the Order for the attention of the person indicated on the face of the Order.

## 21) WAIVER

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Any failure, delay, relaxation or concession by either of the parties in the exercise of its rights to insist upon the performance of any of the obligations or to exercise any rights hereunder, shall not be construed as a waiver or relinquishment of the future exercise of any such rights and the obligations of the Parties shall continue in full force and effect.

## **22) COMPLIANCE WITH LAWS AND REGULATIONS**

- i) The Supplier shall comply with all statutory requirements applicable to the Order.
- ii) The Supplier, its employees and its sub-contractors shall familiarise themselves with and shall comply with the Purchaser's procedures relating to discipline, fire, health, safety and security when on the Purchaser's premises. The Supplier shall provide its employees with and shall ensure that its employees and sub-contractors employees use any protective clothing and safety equipment required.

## **23) OFFICIAL AUTHORISATIONS – EXPORT LICENCES**

- i) The Supplies or part of the Supplies may be subject to export laws and regulations (hereafter referred to as "Export Regulations"), and the parties acknowledge that diversion contrary to such Export Regulations is prohibited. The Purchaser will provide the Supplier with all information necessary to examine such requirement of approval
- ii) The Supplier shall identify any part of the Supplies that is subject to Export Regulations at the time of receipt of the Order. Amendments to such information shall be provided by the Supplier in the event of a change in Export Regulations, and shall provide the Purchaser with all information concerning such applicable Export Regulations. The Supplier shall also provide reasonable assistance requested by the Purchaser to comply with the applicable Export Regulations.
- iii) Whenever all or part of the Supplies is subject to Export Regulations, and without prejudice to its obligations under this Condition 23, the Supplier shall:
  - (a) be responsible for obtaining in time, at no cost to the Purchaser, all relevant official approvals, licenses and authorisations required for the export of the Supplies to, delivery of the Supplies to, and use of the Supplies by the Purchaser and the Purchaser's customer or end-user in accordance with the Order worldwide or as provided by the end-use-statement and
  - (b) where all or part of the Supplies is subject to export licensing procedures, the Supplier shall ensure that an export license or similar documentation is issued by the relevant authorities in time to allow delivery and operation of the Supplies by the Purchaser and the Purchaser's customer or end-user in accordance with the Order and the provided end-use-statement; and
  - (c) clearly indicate on all delivery notices and invoices the export control classification number and the number of the applicable export license;
  - (d) provide the Purchaser with a copy of the export license certificate, including a copy of all provisos that relate to the compliance obligations of the Purchaser, including, but not limited to, any restrictions on sublicensing, any restrictions on retransfer, any requirements for non-disclosure agreements, any limitations on employees, and any other restrictions or conditions that result in authorisation being more restrictive or not as broad as contemplated in the authorisation or license request and/or the Order documentation. Provisos that are classified or that do not relate to the compliance obligations of the Purchaser may be redacted from the copy supplied to the Purchaser, if so required by the relevant export authority.
- iv) If one of more Technical Assistance Agreements ("TAAs") are required for the fulfilment of the Order, the TAAs shall be agreed with the Purchaser before being submitted to the export authorities, and a copy of the issued authorisation including a copy of all provisos that relate to the compliance obligations of the Purchaser shall be provided to the Purchaser.
- v) Notwithstanding anything to the contrary in the Order, the Purchaser's ability to deliver and support products fitted with the Supplies worldwide or as provided by the end-use-statement and the Purchaser's customer's or end-user's ability to use, operate and maintain the products worldwide or as provided by the end-use-statement are of the essence of this Order. In the event that any Export Regulation would prevent the Supplier from complying with this obligation, the Supplier shall, at its own costs, and within a timeframe

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compatible with the Purchaser's business needs either (i) obtain from the relevant administration any authorisation, with respect to the Supplies, necessary for the Purchaser to sell and support products and/or the provided end-use-statement for the relevant Customer or end-user to continue using, operating and maintaining the product, or (ii) replace or modify the restricted technology so that the Supplies ceases to infringe the Export Regulations, while fulfilling all requirements defined by the Order; without prejudice to the Purchaser's rights to claim for compensation for all costs, damages and losses suffered as a consequence of the said breach and/or to terminate this Order for Supplier's default.

- vi) Notwithstanding any other provision of this Order, 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 Condition 23.

## **24) INTERPRETATION AND SEVERANCE**

- i) Clause headings are for convenience only and shall not govern the interpretation of these Conditions.
- ii) In the event that any term, condition, provision, clause or phrase of the Order shall be nullified or made void by any statute, regulation or order or by the decision or order of any Court have jurisdiction, the remaining terms, conditions and provisions of the Order shall remain in full force and effect.

## **25) APPLICABLE LAW**

These Conditions shall be governed by, construed, and shall take effect in accordance with the Laws of England and Wales and the parties hereby agree to submit to the exclusive jurisdiction of the Courts in England and Wales.

Dateiname: ASTR AP 000977UK Terms\_Conds-Issue3\_1206.doc  
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