

# Standard Purchasing Conditions of the N3 Engine Overhaul Services GmbH & Co.KG (N3)

## 1. General Information

1.1 Contracts with N3 concerning the procurement of goods and services, in particular purchase contracts, contracts for work, contracts for work and materials, and service contracts (hereinafter: "contracts"), are concluded only and exclusively according to the following conditions. This shall also apply for orders which N3 places on behalf of and by order of third parties. Deviating terms and conditions of business of the contractor/seller (contractor) shall apply only if expressly accepted in writing. Silence from the side of N3 does not constitute acceptance of deviating terms and conditions of business, also not if they were received.

1.2 Any orders placed by N3 are intended for further use of the goods and services in the aerospace industries. The contractor accepts this, and it shall be regarded as agreed that, for this reason, increased requirements shall apply as for the quality of the goods and services to be delivered or rendered and that, in particular, the specifications must be strictly adhered to. Any deviation from the specification is considered a significant fault. In addition to that, delays - even short ones - of deliveries can cause unusually high damage to N3 or their customers. The contractor therefore accepts, and it shall be regarded as agreed that any dates and deadlines are significant parts of the contract and the exact adherence to the agreed dates of delivery is required for all goods and services. As far as extensions of time are legally required or granted by N3, even short ones, such as 48 hours in the individual case, shall be considered appropriate.

## 2. Offer, Acceptance, Order Placement, Price

2.1. Orders placed by N3 shall be subject to confirmation, and N3 can cancel orders at any time until a written order confirmation is received. The written order confirmation from the contractor must be received by N3 within a period of not more than three (3) days.

2.2. Order confirmations with details deviating from the order placed are subject to the written confirmation from the side of N3. If such a confirmation is not received within two weeks, then no contract has been concluded. Silence does not constitute acceptance, and the acceptance of deliveries and services or payments do not replace the statement of acceptance.

2.3. The prices mentioned by N3 in the order placements are understood without value added tax, as possibly applicable from time to time, however, including of all associated costs (in particular, transport, customs, packaging, insurance costs, as well as costs of the redemption and disposal of the packaging), unless expressly agreed otherwise.

2.4. The acceptance of offers from the side of N3 is made exclusively by written orders placed by the N3 Purchasing Department which are named Order (or "Purchase Order") and include an Order Number (or "Purchase Order Number"). Any communication between the contractor and N3 must include the order number of the respective order.

2.5. On request of N3, the contractor shall provide information about the status of the order to be fulfilled within 24 hours at any time.

## 3. Delivery and Performance, Acceptance of Goods and Services, Notification of Faults

3.1. The place of fulfilment for all deliveries and services is N3's place of business in Arnstadt. The delivery and performance regularly also includes the instructions of use/application and a documentation in written and in electronic form.

3.2. Early deliveries can be rejected, if they are not in the interest of N3. Further legal claims of N3 shall not be affected, whatever the case may be.

3.3. In the case of permanent business relationships, N3 shall have the right to perform quality audits at the contractor's premises – possibly also with representatives of the competent aviation authorities – at any time, however, in particular when faults had been found in any supplies. The contractor undertakes to provide N3 in this respect with all the necessary support as well as to grant access to relevant records, production- and other facilities as well as the offices. Quality assurance measures requested by N3 upon the audit contractors must perform at their own cost. Should the contractor reject the performance of the audit, without it being in violation of his justified interests, or should the contractor reject the removal of faults, then the contractor is obliged to compensate N3 for any damage resulting therefrom. In addition to that, N3 shall be entitled, with fixing a deadline, to withdraw from the contract and to claim compensation for damages instead of the performance, unless the contractor cannot be held accountable for the breach of duty.

3.4. In case of changes that have an impact on quality, in particular changes of the organisation, the place of business or the production procedures, the contractor shall inform N3 in the course of the order processing or, if there is a permanent business relationship, immediately. If such changes that have an impact on quality have consequences for one or several positions of the contractually agreed specifications of an order, then the contractor must point to this fact with exactly specifying the positions concerned. If the contractor breaches this duty, or if the changes that have an impact on quality result in deviations from the contractually agreed specification, N3 shall be entitled to apply the legally admissible claims.

3.5. Packing lists must be attached outside on the packaging and must specify the order number, the item name and part number, the delivery volumes and any certificates/documents included in the delivery, as well as notes on partial deliveries, if there are any. Deliveries that belong together must be specified as such. Goods which do not originate from the territory of the European Union, must be labelled as such and provided with the correct HS code. In case of breach of any of the above duties, N3 shall be entitled to refuse the acceptance, unless the contractor cannot be made accountable for the breach of the duty. Further legal claims shall remain unaffected.

3.6. N3 shall be deemed to have fulfilled the commercially legal obligations to examine the goods and to give notice of defects, if they give notice of obvious defects within two weeks from take-over, and hidden defects within two weeks from their discovery. A later notice of defects can be sufficient under certain circumstances of the individual case.

3.7. The issue of receipts of delivery or the payment of the services of the contractor shall not be considered to imply any statement of N3 that the deliveries and services were complete or rendered according to the contract, nor that do they imply a waiver of possible warranty and other claims.

3.8. The contractor shall not be entitled to render or have the deliveries and services within the frame of the order relationship with N3 rendered by third parties, unless N3 has approved this in advance in writing. In the latter case, the contractor shall guarantee that the subcontractor accepts all conditions specified herein or in the order, and that the subcontractor will assume the duties and responsibilities as the contractor, with respect to the part of the order which the subcontractor will render. In the case that the subcontractor does culpably not fulfil all or any of these duties, the contractor shall be fully liable for the above named duties in relation to N3.

3.9. If any materials are replaced in the course of fulfilling a contract, N3 must be immediately notified in writing. The replaced materials must be stored for 30 days after the completion of the order. If N3 does not request the surrender within this period of time, then the contractor shall destroy the old parts at their own costs and shall proof the destruction to N3. Another use of whatever kind is excluded, no matter what the case may be. Where required the applicable legal provisions of the aerospace industry for material destruction are to be complied with.

3.10. As far as N3 has provided the contractor with planning documents or other documents, then the contractor shall check these immediately and shall point to possible conflicts or obvious deficits. As far as the contractor cannot or does not want to fulfil the order according to the planning documents or other documents provided, then N3 shall be entitled to withdraw from the contract. If the contractor has received the planning documents or other documents only after the order has been placed, and has the contractor already had expenses related to the order, then N3 shall refund these against presentation of receipt. Claims for damages from the side of the contractor against N3 shall be excluded in these cases, unless N3 has acted deliberately or with gross negligence.

3.11. Contracts for work and contracts for work and materials are subject to acceptance. The acceptance of works shall be done exclusively by written statement of N3. Such a statement of N3 shall be legally effective only if it had been signed by two authorised representatives of N3. The acceptance of the works without reservations shall not result in any loss of warranty or other rights, including N3's right to claim contractual penalties. N3 shall be entitled to enforce possibly forfeited contractual penalties, despite of the acceptance, until the time of the final payment.

#### **4. Transport, Default, Transfer of Risk, Retention of Title**

4.1. The costs of delivery, in particular the costs of packaging, shipping and transport insurance as well as costs the redemption of the packaging material – if N3 requires the redemption – shall be borne by the contractor (DDP Incoterms 2000). If redemption by the contractor does not occur despite of a notice given, then N3 can provide for the disposal themselves or via third parties after the expiry of the set deadline. The incurred costs shall be borne by the contractor.

4.2. The contractor shall notify N3 of any defaults of deliveries immediately as they become known, in writing and with indication of the contract number (in paragraph 2.4. the order number), the order date as well as of the probable delivery date. The receipt of this notification does not imply an extension of the agreed performance period, unless N3 agrees with such an extension expressly in writing. Should no such notification be given or should it be incomplete, then the contractor shall be liable for any damage resulting therefrom, unless the contractor has not acted culpably. Further contractual and legal claims of N3 shall remain unaffected. The provisions of 1.2 are expressly referred to.

4.3. In case of a delay, which the contractor is accountable for, of the contractually agreed turn-round time of goods which have been sent to the contractor for the performance of the contract, N3 can require the contractor to immediately deliver, free of cost, an exchange unit which is identical to the ordered unit, notwithstanding of any further contractual and legal claims of N3.

The exchange unit must comply with the requirements of N3 and their customers. If N3 uses an exchange unit from their own resources, because the contractor cannot or is not willing to deliver an acceptable exchange unit in time, then the contractor has to refund the difference between the costs of the exchange unit from the N3 resource and the price which N3 owns to the contractor for the work done on the delayed goods.

4.4 The contractor is obliged to avoid default of delivery as well as to, if applicable, adhere to a period of grace granted by N3, to take additional measures to fulfil the order, such as making additional staff available and instructing overtime work. The contractor shall notify N3 immediately in writing of the measures taken. The costs incurring therefrom shall be borne solely by the contractor.

4.5. Any damage resulting from delays of deliveries on the side of the contractor, shall entitle N3 to enforce compensation claims, unless the contractor has not acted culpably. Further legal claims shall remain unaffected. In the case of default, N3 shall be entitled to require from the contractor a contractual penalty in the amount of 0.15 % of the respective order amount per workday, however, not more than 5 % of the respective order amount in total. The contractual penalty shall be counted against any damage claims for default of performance. The right to withdraw from the contract as well as the right to claim damages shall remain in effect also after the enforcement and/or payment of the contractual penalty.

4.6. Until the complete delivery of the supplies and services and/or until the acceptance of the works by N3 at the place of fulfilment, the contractor shall bear the risk of loss, accidental destruction or accidental damage.

4.7. For all materials which N3 supplies free of charge to the contractor or which N3 has paid for in full or which N3 provides or loans to the contractor free of charge for the performance of the contract, the contractor shall bear the risk of loss, accidental destruction or accidental damage from the time of the transfer of possession. Such materials shall remain the property of N3, and the contractor shall be obliged to keep these things separate from their own things at any time, and to label them as "property of N3 Engine Overhaul Services GmbH & Co.KG", and to store them free of charge, as well as to ensure that they do not become pledgeable. As far as the contractor processes or transforms such materials as intended, such activity shall be performed for N3. N3 shall become the immediate owner of the new things developed in that process. If the materials provided by N3 constitute only a part of

the new things, then N3 shall be entitled to partial ownership in the new things, to that ratio which corresponds to the value of the provided materials incorporated therein in relation to the foreign material. After completion of the order, the contractor shall store these things properly, shall not dispose of them without the prior written instruction by N3, and shall not use them for any other purpose than the fulfilment of the contract. On request of N3, the contractor shall deliver these materials to N3, or shall label them accordingly.

4.8. With the delivery, take-over or hand-over, N3 shall obtain the unrestricted ownership of the supplies and services. Simple and extended retention of title by the contractor shall be excluded.

4.9. All supplies and services must comply with the legal regulations, in particular with the safety provisions of aviation engineering and other safety regulations as well as environmental provisions, including the Ordinance about Dangerous Goods. The respective certifications, testing certificates and other records shall be added to the deliveries free of charge. The contractor shall be obliged to determine the current state of the legal provisions and regulations applicable to the goods and services to be delivered, and to comply with them. Prohibited substances must not be used for deliveries of goods to N3. Substances to be avoided according to the applicable provisions and regulations, and hazardous substances, shall be indicated on the specifications of the contractor and/or any such use must be reported to N3 in writing. As far as applicable, the safety data sheets shall be added to the delivery already at the time of the submission of the proposal of the contractor as well as with the respective first delivery to N3 included with the packing list, and it should be provided at least in both the German and English languages. In every case, the contractor must notify N3 in writing and unprompted, of any transgressions of substance restrictions and the delivery of prohibited materials immediately after obtaining knowledge thereof.

## 5. Warranty and Compensation for Damages

5.1. The contractor shall warrant, in particular, that:

- Exclusively the materials specified in the order or agreed otherwise will be used, and that the specifications and measures and volumes as stated in the order will be adhered to. Deviations are permitted only with prior written approval of N3;
- Certificates, documents and other records specified in the order, which are required for the application of the supplies for the intended purpose or which's necessity can be derived from the contractual purpose of use of the supplies, will be added to the delivery. The contractor further guarantees that the material certificates which are to be added to the delivery comply with the applicable aeronautical regulations and the requirements specified by N3;
- The supplied or manufactured goods, services or works comply with the legal provisions of the Federal Republic of Germany and the national and international flight safety regulations, the recognised rules of engineering, recognised other safety regulations, as well as with any other relevant provisions regarding accident prevention, occupational safety and health or environmental protection, including the Ordinance about Dangerous Substances;
- During the transport of the supplies, the applicable provisions for material relevant for flight safety are observed. In particular, the contractor has to comply with the provisions of the ADR, GGVSE, ATA 300, IATA-DGR, ICAO-TI, IMDG-Code and RID for the shipping of such goods;
- The delivered goods do not violate any commercial trademarks and are not subject to the rights of third parties. Should the contractor come to know of contrary industrial property rights or of third party rights in the supplied goods, then the contractor must notify N3 immediately. The contractor is obliged to hold N3 harmless of all claims of third parties, which these may enforce for the violation of industrial property rights or other third party rights in the supplied goods in relation to N3, due to the delivery or performance of the contractor, provided that the contractor knew of, and should have known of, the contrary industrial property rights or other third party rights in the supplied goods. This obligation to hold N3 harmless extends, in particular, to all costs that N3 may incur for the necessary legal defence as well as to damages N3 may have to pay. In the case of third party claims, N3 shall be entitled to require from the contractor a reasonable security up to the amount of the damage to be expected. Further legal claims shall remain unaffected.

5.2. Claims for defects of N3 towards the contractor from contracts shall lapse three years from the delivery and/or hand-over (purchase contracts) or acceptance (contracts for work, or contracts for work and materials) at the place of fulfilment. The claims of N3 for removal of defects in buildings and things which had been used for a building in accordance to their usual area of application, and which have caused a defect in that building, shall lapse five years from acceptance and/or hand-over. As far as the law provides for longer terms and/or a later beginning of the period of limitation, then the law shall apply, in particular, if claims for damages are concerned which deal with injury to life, body or health, or the freedom of people.

5.3. When the legal preconditions are present, N3 shall be entitled to require supplementary performance, to remove the defect themselves, to reduce the purchase price and/or the remuneration, to require compensation for damages instead of or in addition to the performance, or to require the replacement of wasted expenditures, or to withdraw from the contract. Further legal claims shall remain unaffected.

5.4. In urgent cases (in particular, when the operational safety is at risk, or to prevent extraordinarily large damage), for the removal of small defects, as well as, in the case of default of the contractor in removing faults, N3 shall be entitled to, after having notified the contractor and after the expiration of a short period of grace, as appropriate to the situation, to themselves remove, or to have removed by a third party, the defect and any damage occurred due to it, at the costs of the contractor. This shall also apply if the contractor delivers late and N3 must remove defects immediately in order to avoid default of delivery of their own. Reference is made to the provisions in 1.2 expressly.

5.5. As for the rest, the contractor shall be liable in relation to N3 within the frame of the legal provisions, and shall hold N3 harmless of all third party claims, unless the contractor is not accountable. N3 shall not be limited with their right to claim damages to the fulfilment interest only. The obligation to pay damages and to hold harmless covers, in particular, also all costs, fees and expenditures.

5.6. The contractor is obliged, within the scope of their activity for N3, to take up an appropriate business liability insurance. On request of N3, proof is to be provided – even after the fulfilment of the contract. If such insurance has not been taken up, then N3 shall be entitled to require the contractor to take it up and to provide proof thereof within a fixed term. If this does not happen within the set term, then N3 shall be entitled to withdraw from the contract and to claim damages instead of, or in addition to, the performance. Regardless of that, N3 shall be also entitled to claim a contractual penalty from the contractor in all these cases in the amount of 5 % of the order volume, if the contractor does not present a proof within the reasonable term set by N3. The contractual penalty shall be counted towards further claims for damages, if there are any.

5.7. In the case of contracts for work or contracts for work and material, N3 shall be entitled to, for the duration of the warranty period, to keep a bond in the amount of 5 % of the gross order amount, unless the contractor provides a security in the form of an absolute and furthermore irrevocable suretyship of a large German bank or financial institution. The suretyship must be valid at least two years from the end of the warranty period.

## **6. Invoices, Payments, Offset, Retention**

6.1. Invoices shall be prepared with the indication of the order number, item, date and volume, with prices per unit and per item, to the billing address indicated in the order. They must comply with the tax regulation, particularly with respect to VAT. Invoices for partial deliveries must be marked as such. Invoices which do not fulfil the requirements of sentences 1 and 2 do not establish an obligation to payment.

6.2. Invoices must be prepared and submitted to N3 not later than fourteen (14) days after delivery or completion of the order. Faulty invoices will be regarded ineffective and do not establish maturity.

6.3. Payments by N3 will be made 30 days after complete fulfilment of the contract by the contractor and receipt of the invoice by N3 (maturity). If the contractor fulfils early, before the set term of performance, then the due date for the payment shall not be earlier than 30 days after that set term. Also partial invoices shall become due for payment only after the complete fulfilment of the contract, unless expressly agreed otherwise in writing. N3 shall be entitled to deduct three percent discount, if

payment is made within two weeks after the receipt of the invoice. The time of payment for all payments made by N3 shall be the day when the processing bank has received the transfer order from N3.

6.4. N3 shall be entitled to set off. The contractor shall not have any setoff or retention rights, unless they have been confirmed by court or acknowledged by N3 in writing.

6.5. The assignment of claims of the contractor against N3 shall be excluded.

## **7. Right to Withdraw**

7.1. N3 reserves the right to cancel their order at any time, in full or in part, and the work on the order shall be then discontinued. N3 shall pay the contractor appropriately for the services rendered before the receipt of the notice of withdrawal, and the contractor will support N3 in the task to determine the extent of work done. Further claims from the cancellation of the order shall be considered as settled with the payment for services rendered. The amount payable according to this paragraph 7.1 must, under no circumstances, exceed the total amount which would have become payable in the case of complete order fulfilment by the contractor. In the case of a cancellation, the contractor must enforce any compensation claims in writing not later than two (2) months after the cancellation.

7.2. N3 shall inform the contractor, whether the partially or completely finished goods or works shall be sent to N3 or shall remain with the contractor until further notice.

7.3. N3 can withdraw from the order without liability effects, in the cases of the closing of the business, foreclosure, the opening of insolvency proceedings over the assets of the contractor as well as in the case of severe breach of the duties from these provisions or the order on the side of the contractor, unless the contractor takes complete remedial action within fourteen (14) days after the written notice about such significant breach of contract (there is no notification period for the breach of delivery conditions).

7.4. If the contractor, after the written notice, in the main part, performs the same or like deliveries and services for N3 again faulty or late (repeated default), then N3 shall be entitled to immediate withdrawal from the contract. The right to withdraw extends, in the case of repeated default, also to such deliveries and services which the contractor is still obliged to provide for N3 in the future, on the basis of the impaired contract, or of other contracts.

## **8. Secrecy, Data Protection**

8.1. The parties are mutually obliged to maintain secrecy about any business or other matters that they come to know within the frame of the performance of this contract with regard to the parties as well as other companies which do business with or are related to them, and not to use such information for any other purpose but the originally intended one, unless they release each other from the secrecy obligation in writing, or unless compulsory legal regulations require otherwise. Further, they must abide to the legal provisions regarding data protection and data security. The obligations to secrecy and to data protection shall continue to be effective after the end of this contract.

8.2. The contractor is obliged to comply with the provisions of the Federal Data Protection Act as amended from time to time. The contractor shall hold N3 harmless for any losses, costs, expenses, damage, liabilities, claims, actions or proceedings resulting from a breach of the provisions in this paragraph 8.2.

8.3. All documents which the contractor receives for the performance of the activity for N3, regardless which type and origin, as well as all other records handed over in connection with the performance of the activity for N3, must be kept secret with due diligence and must be returned to N3 after completion of the contract on request, including all and any copies made of the records. In such a case, the contractor must confirm to N3 in writing that all and any records and documents have been handed over.

8.4. This obligation to secrecy does not apply to the forwarding of information to related companies of N3.

8.5. The contractor undertakes not to make any public announcements or to disclose or publish any information in connection with the order. This restriction also applies to information materials, brochures and other advertising material, unless N3 has given their prior written approval. This shall also apply after the ending of this contract.

8.6. After the complete fulfilment of all services owned according to this contract, the contractor shall immediately hand over all work results to N3. If the works or manufacture of products contains research and development which has been financed by N3, in whole or in part, then all rights in the results shall be transferred to N3 with the payment.

## **9. Technical Records, Industrial Property Rights**

9.1 Technical documents, tools, worksheets, manufacturing means etc. provided by N3 shall remain the property of N3; all trademark, intellectual property and other property rights shall remain with N3. They shall be returned to N3, including all duplicates made, immediately after the completion of the order unrequested. Insofar, the contractor shall not be entitled to any right of retention. The contractor may use the above things only for the fulfilment of the order and may not make them accessible to unauthorised third parties. The duplication of the above things is only admitted insofar as needed for the performance of the order.

9.2 If the contractor produces for N3 the things mentioned in paragraph 9.1 sentence 1, in part or in whole, at the costs of N3, then paragraph 9.1 shall apply accordingly, and N3 shall become the (co-) owner at the time of the production, in accordance to ratio of the production costs contributed. With the payment of the agreed remuneration, N3 shall also obtain a free, unlimited – in terms of time, place and contents, transferrable and not terminable right of use in the trademark, intellectual property and other property rights in the so developed things. If the things were produced entirely at the cost of N3, then N3 shall have the sole right of use; otherwise, N3 and the contractor shall share it in the ratio of their parts in the production costs. The contractor shall store the things mentioned in paragraph 9.1 sentence 1 for N3 free of charge. N3 can, at any time, acquire the rights of the contractor with regard to the object by compensating the contractor for any expenditure which have not been written off yet, and require the hand-over of the object.

9.3 The contractor is obliged to look after the objects mentioned above free of charge, to maintain them and to avoid excessive wear and tear. If the contractor places an order with a subcontractor to produce any tools, samples or technical documents and drawings, then the contractor already now assigns all his claims against the subcontractor for a transfer of the tools, samples or technical documents and drawings to N3.

## **10. Provisions on Import and Foreign Trading, Customs**

10.1. For deliveries and services which are rendered from an EU country outside of Germany, the contractor must indicate their EU-VAT-ID number.

10.2. Imported goods shall be without customs payment with the T1 document and under indication of the 8-digit combined nomenclature as amended from time to time (European customs tariff number, HS Code). The contractor is obliged to give explanations and information as required by Regulation (EC) No. 1207/2001 at his cost, to allow examinations by the customs, and to obtain possibly requested official certificates. The contractor is also obliged to enclose all necessary records to the import papers in order to utilise customs preferences.

10.3. The contractor is obliged to comply, in every respect, with the German, European and US-American export and customs provisions as well as the export and customs provisions of the country of the origin of the goods and services. The contractor shall inform N3 about possible duties to obtain permits for (re-)exports in accordance to the German, European and US-American export and customs provisions as well as the export and customs provisions of the country of the origin of the goods and services, in particular, about the classification of the goods according to the EC Dual-Use Regulation as amended from time to time, comprehensively and in writing.

10.4. For all deliveries and services, the INCOTERMS conditions of the International Chamber of Commerce as effective at the time of the conclusion of the contract shall apply; currently, it is INCOTERMS 2000.

## 11. Delivery of Software

For the delivery of software to N3, the below supplementary conditions shall apply:

11.1. With software products, the delivery obligation is not fulfilled until also the complete (system and user) documentation has been handed over. Unless not expressly agreed otherwise in writing, also the program in the source format must be delivered together with any program especially developed for N3.

11.2. The contractor shall grant N3, always at the time of the production, the exclusive right, which is unrestricted with regard to the place, executable in any hardware and software environment, transferrable, permanent, irrevocable and non-terminable, in the software in the original or in amended, translated, processed or modified form,

- to use it, i.e. in particular, to store it and download it permanently or temporarily, to show it and let it run, also if this should require multiplying it;
- to amend it, translate it, process it or modify it in another way;
- to save it on any known medium or in another way, to multiply it, to exhibit it, to publish it, to distribute it in material or immaterial form, in particular non-publically, and to reproduce it publically with the exception of the source code, also by video, sound and other information carriers;
- to use it in databases, data networks and online services, including the right to provide the software, however, not the source code, to the users of the above named databases, networks and online services for searching and retrieval purposes via tools selected by the Client and/or for downloading, but not for commercial purposes;
- to have it used by third parties or run for the Client;
- to use it not only for own purposes, but also to render services for third parties; and
- to spread it.

The rights of use refer to the software, in particular its object and source code in all the development, interim and final stages and the appertaining documentations as well as other materials necessary for the exercise of the rights of use, such as analyses, requirement specifications and/or functional specifications, concepts and descriptions.

11.3. The granting of the rights of use according to paragraph 11.2 shall be considered as settled with the payment of the agreed remuneration. An extended payment obligation for N3, particularly in the form of licensing fees, does not exist.

## 12. ABC (Anti-Bribery and Corruption) Ethical Clauses

12.1 Contractor takes the following representations and warranties to N3:

- 1) That neither it nor its directors, employees, representatives, contractors or sub-contractors, nor any other person acting on its behalf have, authorised, offered, promised, paid or otherwise given anything of value or any financial or other advantage to or for the use or benefit of:
  - a. any person who would constitute either:
    - (i) a "foreign public official" as defined in the UK Bribery Act 2010; or
    - (ii) a "foreign official" as defined in the United States Foreign Corrupt Practices Act (15 U.S.C. Section 78dd-1, et. seq.), as amended ("Government Official"); or
  - b. any director, officer, employee, agent or representative of any commercial organisation or private individual; or
  - c. any other person, entity or third party intermediary while knowing or having reason to know that all or any portion of such payment, thing of value or advantage would be offered, promised, paid or given to any of the persons described in sub-paragraphs a) to b) above, for the purpose of influencing any act or decision of any such person in his/her or its relevant capacity, including a decision to do or omit to do any act in violation of the lawful duty of such person or entity, or for the purpose of inducing such person or entity to use his/her or its influence with any organisation, individual, government or instrumentality

thereof to affect or influence any act or decision of such organisation, individual, government or instrumentality, and in either case in order to obtain or retain business, secure any improper advantage or obtain any licence, permit, approval, certificate or clearance with respect to import, export, storage or transport of any goods, vehicles, premises or facilities.

- 2) That neither it nor its directors, employees, representatives, contractors or sub-contractors, nor any other person acting on its behalf have, engaged in any other conduct which would constitute an offence under the United Kingdom Bribery Act 2010, the United States Foreign Corrupt Practices Act 1977 (15 U.S.C. Section 78dd-1, et. seq.), as amended, and any other legislation relating to anti-bribery and corruption matters ("ABC Legislation").
- 3) That neither it nor its directors, employees, representatives, contractors or sub-contractors, nor any other person acting on its behalf will carry out any of the acts described in clauses 2) and 3) above.

12.2 Any money due from N3 to the contractor under this contract, or in relation to its subject matter, will not be payable if contractor has committed any actual or alleged breach of the ABC Legislation or of clause 12.1 of this contract. In the event of an alleged breach, payment will only be payable once N3 has concluded that there has been no actual breach of the ABC Legislation or clause 12.1 of this contract.

12.3 N3 may, without prejudice to any of its rights under law, contract or equity, terminate this contract immediately by written notice if the contractor is in breach of clause 12.1 of this contract, or if any time the representations and warranties given by the contractor in clause 12.1 would not be true and accurate in all respects.

12.4 Contractor agrees not to:

- 1) act in breach of any duty of confidentiality owed to any third party in the course of performing its obligations under this contract; and
- 2) offer or provide any information whether offered in written, verbal or other form that such contractor is not authorised to have and use in connection with this contract, including, but not limited to, any information from a competitor's confidential proposals, bid terms or contract and pricing terms ("Prohibited Information")

12.5 If contractor breaches, or it is alleged that Third Party has breached, any of its obligations under clause 12.1 or any representation and warranty given by contractor in clauses 12 was incorrect when given; then contractor shall indemnify N3 against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by N3 as a result of contractor actual or alleged breach or as a result of the representation and warranty having been incorrect when given. Notwithstanding any other clause in this contract, this liability will not be limited.

12.6 Contractor agrees to notify N3 immediately if it becomes aware of any actual or potential breach of clause 12.1.

### **13. Place of Jurisdiction, Applicable Law**

13.1. The exclusive place of jurisdiction for all and any disputes which may arise from or in connection with the business relationships with N3, which are based on these Purchasing Conditions, also with regard to their inclusion, validity, suspension or ending, shall be the courts competent for Arnstadt, provided the contractor is a merchant. However, N3 can sue the contractor also at any other, legally admissible, in particular at the contractor's own, place of jurisdiction.

13.2. For all legal relationships between N3 and the contractor, exclusively the law of the Federal Republic of Germany shall apply, with the exception of the reference clauses of the International Private Law, which would result in the application of foreign law. The application of CISG is excluded.

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