

General Terms & Condition Purchase Standards Goods

1. General Terms

1.1 These General Purchase Conditions (hereinafter "GPC") shall apply to all purchase orders (hereinafter: "PO") placed by Esprit or entities of the Esprit Group (both hereinafter "Esprit") with manufacturers and/or suppliers of goods (hereinafter "Contractor"), not relevant whether the contract is concluded verbally or in written form. With acceptance of Esprit's PO by Contractor the GPC will be part of the contractual commitment between the parties.

1.2 The applicability of Contractor's general delivery terms and conditions is expressly rejected, and they shall not be part of the contract between the parties. Esprit's purchase conditions do also apply if Esprit receives the goods of Contractor in positive knowledge of opposing terms and conditions and without explicitly objecting them.

2. Order Acceptance

Contractor is obliged to confirm PO by Esprit within three working days at the latest upon receipt of Esprit's PO in writing. In the same time frame a feedback will also be given to Esprit if Contractor determines after receipt of the PO that it is incomplete or contradictory, contains unclear or incorrect date or that the performance is technically or commercially impracticable for Contractor. In cases where a prompt order confirmation is required, Esprit is entitled to define a shorter commitment period.

3. Prices

3.1 Prices stated in the respective PO are applicable and binding and shall include all costs incurred by Esprit in connection with the manufacture and delivery of the goods. Additional costs deviating from the PO shall only become part of the contract if Esprit has previously approved in writing. If Esprit places a PO without expressly provided prices, the acceptance of Contractors' prices remains reserved.

3.2 Prices in the PO are fixed prices plus the respective statutory VAT applicable at the time of conclusion of the contract.

3.3 The ancillary delivery costs (in particular: packaging, transport, customs duties, transport insurances) shall be borne by Contractor.

4. Delivery, Delay

4.1 Deliveries shall be made by delivery to the address mentioned in the respective PO.

4.2 The delivery date mentioned in the PO is binding. Contractor is obliged to immediately inform Esprit in writing if circumstances occur or will be recognized that the binding delivery date cannot be met or that the contractual delivery of goods is at risk. In these cases Contractor is obliged to offer all necessary measures to implement alternative solutions.

4.3 The risks of transportation shall be borne by Contractor. The risk of the loss of the goods shall pass on Esprit upon receipt of the goods by Esprit.

4.4 Contractor is responsible for the proper packaging of the goods. In particular, Contractor shall ensure that only new and legally permissible packaging materials are used. In doing so, Contractor shall take into account any wishes or requirements of Esprit. Esprit reserves the right to send back the packaging at the expense of Contractor. In this case Esprit will deduct the costs of the packaging from the invoiced amount.

4.5 Upon request of Esprit all deliveries must be accompanied by a proof of origin and a delivery note.

4.6 Esprit is entitled to reject the delivery of defective or essentially delayed goods. This shall also apply if only a part of the delivery or service is defective or delayed. Esprit is not obliged to accept partial or excess deliveries, unless it is agreed otherwise between the parties.

4.7 Esprit is an SVS/RVS prohibition customer. Contractor is obliged to point out this fact to freight forwarders that they do not conclude a specific insurance. Contractor indemnifies Esprit from all damages and costs occurred by a breach of this regulation.

4.8 In the event of delay, Esprit shall be entitled to demand a contractual penalty from Contractor. The contractual penalty shall amount to 0,5 % of the net total value of the respective delivery for each commenced week of delay, limited to 5 % of the net total value of the respective delivery. Esprit expressly reserves the right to assert further claims for damages. In the event of such a claim, the amount paid pursuant to this section shall be set off against any claim for damages.

4.9 The unconditional acceptance of one or more delayed deliveries shall not constitute a waiver of any rights of Esprit due to exceeding the delivery time.

5. Payment

5.1 After complete delivery of products Contractor will issue an invoice with value-added tax. The invoice shall comply with all tax and commercial law regulations which are applicable. Invoices can only be processed if the PO number is included. Partial billing for goods is not acceptable unless it was otherwise agreed between the parties. Invoices shall be payable within fourteen (14) days with 3% discount from the receipt of the relevant invoice if the provided products or services were properly functioning and without any defect. Otherwise, the invoices are payable within thirty (30) days without deduction. Payment and discount periods begin with receipt of a verifiable invoice at Esprit, at the earliest with receipt of the properly functioning and defect-free goods.

ESPRIT implemented an electronic billing system. The Contractor will use this electronic billing system for issuing its invoices. Details about how to issue the invoice according to the electronic billing can be found at <https://www.esprit.com/de/company/legal/supplier-information>. Invoices will only be regarded as correctly issued if they comply with the above-mentioned specifications and the requirements of the electronic billing system.

5.2 A payment by Esprit shouldn't be understood as an acceptance of the delivered goods without reservation.

6. Warranty, Liability

6.1 Contractor is obliged to deliver goods as described and specified in the PO. Esprit's warranty claims for material defects or for defects on title against Contractor shall be governed by the applicable statutory law, unless otherwise stated in the GPC.

6.2 Contractor expressly guarantees that the goods (a) meet the requirements of the product description stated in the PO, (b) are free from any other defects or failures that would cancel or limit the value or fitness of the goods for its intended or ordinary purpose under the contract, (c) comply with the state of the art and the recognised rules of technology, (d) comply with applicable statutory and official provisions and with European Economic Community regulations, particularly its safety standards, (e) not contain substances subject to labelling after REACH (not even if they marked) or if the goods contain products subject to identification under REACH, that these products are compliant with REACH and with any applicable legislation, (f) are not defective in title, (g) were not produced with any child labour, health endangerment of employees by hazardous substances, inappropriate work places, illegal working time of employees or inappropriate remuneration of employees, (h) comply with the regulations of the animal welfare and (i) that Contractor has properly carried out quality controls or outgoing goods inspections, which are agreed between the parties. Contractor is, upon request of Esprit, obliged to submit without delay all evidence and certificates to prove the aforementioned circumstances.

6.3 Esprit shall inspect the goods after delivery by Contractor without undue delay and, if a defect becomes apparent, shall notify Contractor thereof without undue delay. For defects which can't be detected upon the receipt of the goods (hidden defects) Esprit is obliged to notify Contractor after detection without undue delay. All notifications under this section shall be made in writing, which includes notifications per e-mail or fax.

6.4 The receipt of delivery for goods shall neither apply as a quality confirmation, nor as a waiver of claims for transportation damages. The receipt information shall further not be understood as an unreserved acceptance of the goods.

6.5 In the event that Contractor is liable for product damages under product liability laws, he is obliged to indemnify Esprit against compensation claims by third parties on first request. Esprit's contractual claims remain unaffected.

7. Intellectual Property, Infringement of Third Party Rights

7.1 Contractor represents and warrants that the manufactured and/or delivered goods do not infringe any copyright or any intellectual property rights (hereinafter "Third Party Rights"). If Contractor becomes aware of any Third Party Rights, which might be in conflict with the provision of the deliveries, Contractor shall inform Esprit and obtain Esprit's decision as to whether to use such Third Party Rights or not.

7.2 If Esprit requests Contractor to modify an item with graphics, photographs, images, logos, document layouts, artworks, texts, fonts, templates or any other in-formation (referred to herein as "content") the parties agree individually who is responsible for the provision of the content.

7.3 All intellectual property of Esprit shall remain the property of Esprit. This applies also to intellectual property of ESPRIT contained in documents or materials that ESPRIT hands over to Contractor for the performance of the Productions and/or Deliveries.

7.4 Models, samples, layouts, reproducible copies, lithographies, clichés, textstorages, engraved stamps etc. ("templates and samples") provided by Esprit or produced by Contractor for Esprit are property of Esprit. Contractor further agrees that manufacturing as well as editing and processing was only performed for and under instruction of Esprit.

7.5 Contractor irrevocably grants Esprit the sole and exclusive, transferable right, which is unrestricted in terms of location, time, and scope, to use, publish, display, broadcast, transmit, reproduce, adapt, amend, translate, duplicate, sublicense, comment, disseminate and exploit the ideas, samples, designs, production notices, movies, pictures and compositions as well as all extensions and adjustments to them in any manner and anyway.

7.6 Contractor agrees to indemnify, defend and hold harmless Esprit and its Affiliates as well as their respective officers, directors, employees, agents, successors and assigns from and against any and all losses, costs, damages liabilities, claims, demands and expenses that may be incurred and assessed against Esprit or its Affiliates or in connection with any claim by reason of or in connection with (a) the Productions and/or Deliveries provided under this Agreement by Contractor or its subcontractors, (b) guarantees and warranties given by Contractor under this Agreement, (c) Contractors materials or third party materials or (d) actions taken by regulatory or police authorities. If legally permissible, Contractor shall assume the extrajudicial and judicial defense of any such Action at its expense. In the event appropriate action is not taken by Contractor within fourteen (14) days after its receipt of the notice from Esprit, Esprit shall have the right to defend such Action as it deems appropriate. No settlement of such Action may be made without first allowing Contractor to comment on the terms of settlement but the final decision on the matter shall remain with Esprit.

7.7 These provisions shall continue to apply even after termination of the contract to the extent that claims are asserted by third parties for Deliveries rendered during the term of the contract.

8. Cancellation

Esprit is entitled to cancel and terminate concluded contracts, if contractor hasn't started with the execution of the contract yet. Furthermore Esprit has the right to withdraw or terminate if Esprit recognizes, that the proper fulfillment of the contract is endangered. Esprit is also entitled to cancel and terminate contracts at any time if Esprit compensates Contractor for costs incurred until the date of cancellation/termination. Statutory rights of withdrawal remain unaffected.

9. Set-Off and Right of Retention

9.1 Esprit shall be entitled to set-off (§§ 387 ff. BGB) and retention (§ 273 BGB) to the extent permitted by law. In particular, Esprit shall be entitled to withhold payment pro rata until proper performance in the event of defective delivery. Esprit is also entitled to set-off claims of Contractor against Esprit with claims of an entity of the Esprit Group.

9.2 Without Esprit's prior written consent, Contractor shall not be entitled to assign its contractual claims against Esprit in whole or in part. If Contractor assigns its claims against Esprit without Esprit's prior written consent, Esprit shall continue to be entitled to make payments to Contractor with discharging effect.

9.3 Contractor is only entitled to assert a retention right if the reason of the retention right is based on the same contractual relationship and its claims are accepted by Esprit, undisputed or have been finally adjudicated.

10. Confidentiality

10.1 Contractor is obliged to keep the terms and conditions of the contractual relationship and any information, documents and data made available for this purpose confidential and to use them for the execution of the contractual relationship only. They may only be disclosed to third parties with the express written consent of Esprit.

10.2 At any time immediately upon Esprit's request, as well as at the end of this Agreement, Contractor shall return to Esprit all documents and data that Esprit handed over to Contractor. This obligation also applies to all copies, reproductions and summaries of the documents. Esprit shall confirm in writing to Contractor that it has complied with the above commitments within thirty (30) calendar days upon termination of this Agreement.

10.3 Without the prior written consent of Esprit or a separate Agreement between the parties in writing, Contractor is not allowed to use the name or the trademark of Esprit, not refer to the business relationship in advertising material or name Esprit as a reference.

10.4 Contractor shall obligate subcontractors and employees accordingly to the aforementioned obligations in sections 10.1 -10.3.

10.5 In the event of an infringement of the commitment to confidentiality for which Contractor is responsible, a contractual penalty is deemed to be agreed for each infringement, the amount of which will be determined by Esprit and which is to be reviewed by the courts in the event of any dispute. Claims for damages in excess of this by Esprit remain reserved.

10.6 The obligations under this section 10 shall not be affected by any termination of the Contract and are valid for a period of 5 years after termination of the contractual relationship.

11. Force Majeure

11.1 In case any Party fully or partially fails to fulfil its obligations because of a force majeure event (e.g., fire, flood, strike, lockout, epidemics and pandemics), such a failure does not constitute a violation of the respective Party's obligations if the respective Party has not culpably contributed to such failure.

11.2 In case the services cannot fully or partially fulfil its purposes for ESPRIT because of a force majeure event (e.g., fire, flood, strike, lockout, epidemics and pandemics), ESPRIT is entitled to refrain from accepting the services and payment for the declined services if ESPRIT has not culpably contributed to the impossibility of the purpose fulfilment.

11.3 Nothing in this Section 18 shall limit the liability of the Parties to contain the damage inflicted upon the respective other Party as far as possible for the respective Party. Such containment can be carried out by notifying the respective other Party of the failure/impossibility as early as possible.

12. Final Provisions

12.1 The laws of the Federal Republic of Germany shall be applicable. The UN-Convention on Contracts for the International Sale of Goods (CISG) is not applicable.

12.2. All amendments and additions to the specific agreement must be made in writing in order to be effective.

12.3 In the event that single or several provisions of the specific agreement are invalid or void, whether in whole or in part, the validity of the remaining provisions shall not be affected hereby. Invalid regulations will be replaced by the statutory provisions of the BGB(German Civil Code)/HGB (German Commercial Code).

12.4 As far as not otherwise expressly stipulated, Düsseldorf shall be venue and place of performance. Esprit is entitled to sue Contractor at his place of general jurisdiction or at other places of jurisdiction.