

## Purchase terms and conditions

Release Date April 2021

**1. Scope**

1.1. The following General Purchasing Terms and Conditions of Mercury Mission Systems International S.A. (MMSI) applies to all goods and/or services purchased or acquired by MMSI (hereinafter defined as “Items”) from the Supplier unless determined otherwise either in the offer, in the purchase order or in the order confirmation.

1.2. Any general terms and conditions of the Supplier deviating from or supplementing these General Purchasing Terms and Conditions are non-binding for MMSI, even if MMSI does not object to them explicitly, if the Supplier states that he wishes to deliver only according to his general terms and conditions, or if these are included in his declaration of acceptance in accordance with section 2.1 or in the delivery note. Acceptance or payment of deliveries and services also do not constitute agreement.

**2. Conclusion of contract**

2.1. If the Supplier does not accept the purchase order from MMSI by written declaration within two weeks upon receipt, MMSI is entitled to cancel the purchase order. The receipt of the acceptance by MMSI shall be decisive for the observation of the deadline.

2.2. The acceptance of the purchase order shall contain all essential order data, particularly the exact description of the ordered delivery Items, the price, the order number, export classification (ECCN), Harmonized System (HS) tariff number, customs value, the country of origin (non-preferential) and the order and delivery date.

2.3. Amendments or changes of purchase orders require the written confirmation of MMSI.

2.4. The Supplier is not authorized to contract out the purchase order neither entirely nor partly without prior written consent of MMSI. The unauthorized contracting out entitles MMSI to withdraw from the contract in whole or in part and to claim damages.

**3. Supplier’s employees background check.**

If a purchase order is about subcontracting a service to a Supplier with Supplier’s employee(s) accessing MMSI premises, MMSI IT infrastructure and/or MMSI Proprietary Information, the Supplier is responsible for conducting employee background checks (Identity, CV, former position, diploma, etc. verification) before the subcontracted tasks can start. If MMSI discovers any breach on this subject or employee misrepresentation, it reserves the right to terminate the subcontracting agreement.

To comply with Export Compliance requirements, MMSI reserves the right to screen any person contracted for a project or any task.

**4. Services on MMSI premises**

4.1. If Services are to be performed on premises owned or controlled by MMSI, then the supplier shall comply with all the rules and regulations established by MMSI or any such MMSI customer for access to and activities in and around premises owned or controlled by MMSI or such MMSI customer.

**5. Prices**

5.1. Deliveries are made DAP Plan-les-Ouates (Incoterms® 2010), unless agreed otherwise.

5.2. Customs duty and insurance expenses for the Items, cargo insurance in particular, will not be paid by MMSI. The Supplier shall deliver all Items duty paid.

5.3. The agreed prices are fixed prices and exclude subsequent claims or price increases of any kind.

**6. Terms of payment**

6.1. Invoices of the Supplier are to be submitted in duplicate and have to contain all data requested in the purchase order for each delivery. Electronic invoices will only be accepted in pdf format.

6.2. MMSI will effect payments – unless agreed otherwise – by bank transfer after delivery or acceptance and receipt within 90 days due at month end. Also, in the case of a set-off or of justified use of retention rights because of defects the deduction of the discount is permitted. Payment is subject to invoice verification.

**7. Delivery date and place of fulfillment**

7.1. The agreed delivery dates are binding. Advance deliveries as well as deliveries after the agreed delivery date are permitted only with the consent of MMSI.

7.2. The receipt at the receiving office indicated by MMSI is relevant for the timeliness of deliveries. The Supplier has to inform MMSI immediately if and as soon as there are indications that he will not be able to meet the delivery date. The

acceptance of a delayed delivery by MMSI does not imply the waiving of any compensation claims.

7.3. If the Supplier is in default with 20% of the deliveries of the total quantity of items delivered during a 12 months period, MMSI is entitled to apply liquidated damages for each rejected item of 20% of the rejected items price.

7.4. MMSI is not obliged to accept partial deliveries or services.

7.5. The place of fulfillment for deliveries and services provided by the Supplier is the receiving office determined in the purchase order.

## **8. Shipment, passing of risk**

8.1. The Supplier has to pack and ship the delivery properly abiding by all relevant packing and forwarding instructions.

8.2. Shipping documents such as packing list and invoice shall be included with the deliveries. Order numbers and other data specified by MMSI in the purchase order must be stated on all documents.

8.3. Any additional costs MMSI incurs due to non-compliance with the above defined regulations will be charged to the Supplier. In the case of deliveries without installation or assembly, the risk will pass when the Items are received at the receiving office determined by MMSI. In the case of services and deliveries with installation or assembly, the risk will pass with the acceptance at the place of assembly.

## **9. Rights of MMSI in case of defects**

9.1. MMSI will notify the Supplier about defects in writing as soon as possible. Therefore, upon request for major defect an 8D report have to be issued by the supplier.

9.2. In the case of a purchase or work contractual defect, MMSI is, in addition to the statutory claims, entitled to rectify the defect itself after the fruitless expiration of a reasonable period set by MMSI for supplementary performance, and to demand reimbursement of the necessary expenses, unless the Supplier refuses the supplementary performance with justification. MMSI can demand advance payment from the Supplier for the expenses required to rectify the defect.

## **10. Duty of notify and care**

10.1. The Supplier has the duty to notify MMSI in case the Items proposed and offered by the Supplier are not applicable for the intended use, both if MMSI has informed the Supplier about the intended use of the Items or if the intended use is recognizable without explicit indication.

10.2. Circumstances affecting negatively the agreed delivery dates have to be reported promptly to MMSI in writing to clarify further actions.

10.3. The Supplier has to notify MMSI immediately in writing of any changes of the composition of the used materials or of the design if different from previous equal deliveries to MMSI. Any such changes require the written consent of MMSI.

10.4. In the case of discontinuation of raw materials, components, or products ordered by MMSI, the Supplier has to notify MMSI immediately in writing.

## **11. Product liabilities**

The Supplier has the obligation to check his deliveries for defects and to do everything feasible in order to avoid any product liability. If MMSI is held responsible of the defectiveness of a product by a third party and if the defectiveness is entirely or partly due to a defect of the Supplier's delivery, MMSI may demand indemnification towards the third party instead of compensation of all damages. The Supplier's obligation to pay damages includes also the costs of a precautionary recall in order to prevent damage if necessary.

## **12. Environmental Protection and Hazardous Materials**

12.1. The Supplier has to ensure that deliveries and services meet the requirements of the regulations of environment protection, accident prevention and other industrial safety regulations, as well as safety rules and all statutory regulations prevailing in Switzerland. The Supplier has to inform MMSI of any particular and uncommon treatment and waste disposal requirements for each delivery.

12.2. The Supplier has the duty to fulfill at any time all requirements according to the regulation No. 1907/2006 dated December 18th 2006 of the European Parliament concerning the handling of chemical substances (so-called "REACH regulation"). In particular, the Supplier has to fulfill all duties according to Articles 31 to 33 (incl.) of this regulation and further - even without any specific request - to provide MMSI promptly with all information which is needed in the context of this contract according to the REACH regulations and which are relevant for the contractual use of products to be delivered by the Supplier. Any Supplier located outside the European Union has to fulfill the obligations of an importer stated in the regulations. These obligations of the Supplier are considered as essential contractual obligations (so-called "cardinal duties"), which are mandatory for the execution of the contract. If the Supplier does not sufficiently, not in time

or not at all fulfill these obligations, he shall indemnify MMSI against each and any damages, which MMSI may incur from the non-fulfillment of these obligations by the Supplier.

12.3. MMSI is entitled to demand the compliance with additional safety regulations.

### **13. Provision of materials**

13.1. All documents and objects of any kind provided to the Supplier by MMSI remain the property of MMSI. They may be used exclusively for providing the order. The Supplier has to accept insurance for any materials provided to him against loss and deterioration. There is no right of retention on the part of the Supplier vested in materials belonging to MMSI.

13.2. As far as any of the objects provided by MMSI are processed, converted or transformed by the Supplier to form a new product, MMSI is deemed the manufacturer. In the case of connection or inseparable blending with other objects, MMSI acquires joint ownership in the new object in proportion of the value which the objects had at the time of connection or blending.

13.3. If the connection or blending effects that the products of the Supplier are considered as main object, MMSI shall be entitled to co-ownership of the new object proportionally. The Supplier holds this co-ownership for safekeeping free of charge.

13.4. The Supplier has to carry out any maintenance and inspection work that may be necessary at his own expense as well as to insure the provided objects sufficiently and prove this to MMSI upon request.

### **14. Intellectual Property**

14.1. Intellectual Property (“IP”) means inventions, discoveries and improvements, know-how, technical data, drawings, specifications, process information, reports and documented information, and computer software. IP includes all worldwide common law and statutory rights to the foregoing, including but not limited to, patents, industrial designs, trade secrets, copyrights, mask work registrations, and the like.

14.2. Background IP: SUPPLIER shall retain ownership of all IP owned or developed by SUPPLIER prior to the effective date of or outside the scope of this Order (“Background IP”). SUPPLIER shall grant to MMSI a non-exclusive, paid-up, royalty-free worldwide license (i) to use, reproduce, distribute, and modify such Background IP and (ii) to use, make, have made, offer for sale, sell, distribute and import products and services that incorporate or embody such Background IP, in each case as necessary for the purpose of exploiting MMSI’s use of the Products or Services or the Foreground IP that are delivered to MMSI by SUPPLIER under this Order or are performed for MMSI by SUPPLIER under this Order.

14.3. Third Party IP: To the extent SUPPLIER incorporates third-party IP into any Products, SUPPLIER shall obtain for MMSI at least the license rights granted in subparagraph (b) of this Clause in such third-party IP, at no additional cost to MMSI.

14.4. Foreground IP means any IP that is conceived, developed, or reduced to practice by SUPPLIER in the performance of this Order. MMSI shall retain sole and exclusive ownership of such Foreground IP and SUPPLIER acknowledges that all Foreground IP is being created for MMSI as “works made for hire” and shall be the exclusive property of MMSI. To the extent the Foreground IP is not deemed a “work for hire” under applicable law, SUPPLIER hereby irrevocably assigns and transfers to MMSI all right, title and interest in the Foreground IP, including but not limited to patent and copyright interests and rights to create derivative works, and shall execute all documents reasonably required and provide all assistance reasonably necessary for MMSI to perfect its rights in such Foreground IP.

14.5. SUPPLIER warrants that the Products delivered or the Services performed under this Order will not infringe or otherwise violate the intellectual property rights of any third party in any country. SUPPLIER shall defend, indemnify, and hold harmless MMSI, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney’s fees, all expenses of litigation and/or settlement, and court costs, arising out of any action by a third party that is based upon a claim that the Products or Services delivered or performed under this Order infringes or otherwise violates the intellectual property rights of any person or entity.

### **15. Indemnity**

15.1. SUPPLIER, at its own expense, shall indemnify, defend and hold MMSI and its customers harmless from and against any and all claims, demands, suits, judgments, damages and liabilities, costs and expenses (including reasonable attorneys’ fees and court costs) arising directly or indirectly out of or in connection with (a) SUPPLIER’s performance under this Order, (b) any breach of any SUPPLIER’s obligations under this Order, or (c) any claim made by SUPPLIER’s personnel against MMSI.

## 16. Insurance

16.1. In the event that SUPPLIER or its subcontractors perform work at the premises) of MMSI or MMSI's customers for any reason in connection with this Order (unless only a small amount of work is required on the MMSI or MMSI's customer premises, e.g., a few brief visits per month) then SUPPLIER and its subcontractors shall maintain for the performance of this Order the following insurances:

16.2. Workers' compensation insurance meeting the statutory requirements where work will be performed;

16.3. Employer's liability (EL) in the amount of €1 million per each accident or per each employee for disease;

16.4. Commercial general liability (CGL) including Products Liability and Completed Operations liability in the amount of €1 million per occurrence and €2 million in the aggregate annually, or in such higher amounts as MMSI may require;

16.5. Automobile liability (AL) insurance covering third party bodily injury and property damage with a minimum of €1 million per occurrence limit, or in such higher amounts as MMSI may require; and

16.6. Such other insurance as MMSI may require.

16.7. SUPPLIER shall provide MMSI thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SUPPLIER's required insurance, provided however such notice shall not relieve SUPPLIER of its obligations to maintain the required insurance. SUPPLIER shall have its insurers name MMSI as an additional insured on the CGL and AL policies for the duration of this Order. If requested, SUPPLIER shall provide a "Certificate of Insurance" evidencing SUPPLIER's compliance with these requirements. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of MMSI and is not contributory with any insurance which MMSI may carry. "Subcontractor" as used in this clause shall include SUPPLIER's subcontractors at any tier. SUPPLIER's obligations herein for procuring and maintaining insurance coverage are freestanding and are not affected by any other language in this Order.

## 17. Compliance with Export Control Laws and Regulations

17.1. The Parties agree to comply with Export Control Laws and Regulations applicable to Items provided under these Terms and Conditions. Export Regulations shall mean laws, regulations and orders applicable to the export or re-export (including but not limited to international transfers, disclosure or release) of Items and includes, without limitation, (i) US export controls administered under the Export Administration Regulations ("EAR") and the International Traffic in Arms Regulations ("ITAR"); (ii) Switzerland's Federal Ordinance on the Control of Dual-Use Goods and of Specific Military Goods; (iii) EU and EU Member State export controls administered pursuant to Council Regulation (EC) 428/2009 and the various national export control laws, regulations of EU Member States regulating dual-use and military items and related activities; and (iv) similar export control laws, regulations and orders of other jurisdictions to the extent applicable to any activity conducted in furtherance of this Agreement worldwide. The Parties acknowledge that diversion contrary to such Export Regulations is prohibited.

17.2. The Parties shall not (directly or indirectly) sell, transfer, or assign any Item received pursuant to these Terms and Conditions to any sanctioned party or restricted end-user (as identified by the USA, Switzerland, the European Union or the United Nations), or to any territory or country subject to comprehensive international trade restrictions without prior applicable government authorization or license. No Party may be required to take any action or perform any obligation under this Agreement that, in its sole discretion, may be inconsistent with any laws, regulations, decrees, ordinances, orders, demands, requests, rules or requirements relating to Export Regulations.

17.3. The Supplier shall provide whenever necessary assistance to obtain or implement any applicable export license or authorization and shall provide information and data required to comply with relevant domestic and foreign trade rules and regulations on each invoice and shipping document and for each Item. This includes, inter alia; the export classification (ECCN), Harmonized System (HS) tariff number, customs value and the country of origin (non-preferential). The Supplier shall make available to each other sufficient information or data to allow for the determination of these elements

17.4. The Supplier shall provide MMSI with a copy of the applicable Export Licences. The provisions that are classified may be redacted from the copy supplied to MMSI, if so by the relevant authorities.

17.5. The product to be delivered or parts of the product may be subject to export laws and regulations (hereafter referred to as "Export Regulations"). The contract parties are aware that non-compliance or deviations from the Export Regulations are prohibited.

17.6. Irrespective of other regulations of this contract, the Supplier is liable for all damages, losses and liabilities incurred by MMSI as the result of the Supplier's non-compliance with its obligations under section 13.

## 18. Confidentiality

18.1. The purchase order of MMSI has to be treated confidentially. Furthermore, the Supplier has to keep all commercial and technical information and documents, which become known to him through the business relationship and which are not generally known, secret and use them exclusively for providing the ordered deliveries. Any subcontractors have to be bound to confidentiality accordingly. Drawings, models, samples, and similar objects shall not be submitted or made available to unauthorized third parties. Duplicating such objects is permitted only within the limits of copyright provisions and to the extent required in order to fulfill the obligations incumbent upon the Supplier.

18.2. The Supplier is only entitled to mention the company or the brand name of MMSI for purposes of advertising materials, when naming references, or for other publications, if MMSI has consented to this in writing in advance.

### **19. Quality**

#### **19.1. Certificate of Conformance / Compliance (CoC)**

The supplier shall provide a CoC with each delivery of product. The CoC provided with this order shall contain as a minimum:

Purchase Order number

Manufacturer's name, if different from Seller's

Part number /Lot number(s) or Date Code(s)/ revision (as applicable) of the items in the shipment.

The supplier certifies (Manufacturers and Suppliers including Distributors) that all product delivered to MMSI satisfy this Purchase Order are fully compliant to MMSI Terms and Conditions. The supplier has in his possession acquisition traceability documentation provided by/from the Original Equipment or Component Manufacturer and/or all previous Franchised/Authorized distributors within the supply chain for all material contained in this shipment.

#### **19.2. Date Code Restriction**

Parts with a Date Code older than 3 years, at the date of shipment, shall not be delivered to MMSI. Older parts are allowed in case of re-screening; the date of the re-screen shall be identified on the CoC or attribute datasheet for each shipment provided with test report.

#### **19.3. Audit**

The supplier shall give right of access by the purchaser, their customer and regulatory authorities to the applicable areas of all facilities, at any level of the supply chain, involved in the order and to all applicable records.

### **20. Counterfeit Materiel**

Definition:

- Materiel: materiel refers to material, parts, assemblies and other procured items, including electronic parts.
- Suspect materiel: materiel, items, or products in which there is an indication by visual inspection, testing, or other information that it may meet the definition of fraudulent materiel or counterfeit materiel provided below.
- Fraudulent materiel: Suspect materiel misrepresented to the customer as meeting the customer's requirements.
- Counterfeit materiel: Fraudulent materiel that has been confirmed to be a copy, imitation or substitute that has been represented, identified, or marked as genuine, and/or altered by a source without legal right with intent to mislead, deceive or defraud.
- Original Manufacturer: An organization that designs and/or engineers and produces materiel and is pursuing or has obtained the intellectual property rights to that materiel.
- Franchised Distributor: A distributor with which the original manufacturer has a contractual agreement to buy, stock, re-package, sell and distribute its product lines.

#### **Conditions:**

- Only new and authentic materiel is to be delivered or used in products delivered to MMSI. No suspect nor counterfeit materiel is delivered to MMSI or used into products delivered to MMSI
- Materiel shall be purchased directly from its Original Manufacturer or through the Franchised Distributor(s) for the said materiel. Documentation provided shall include Manufacturer's name, address, part number, date code, lot code, serialization and/or any other batch identification.
- If counterfeit or suspect materiel is provided under an MMSI purchase order and found in any of the Items delivered, such item will be impounded by MMSI. The seller shall promptly replace such counterfeit or suspect materiel with materiel acceptable to MMSI, and the seller shall be liable for all costs related to removal or replacement of said materiel.
- MMSI reserves all contractual rights and remedies to address grievances and detrimental impacts caused by counterfeit or suspect materiel delivered.

### **21. Warranty**

17.1 The Supplier guarantees that the Items delivered have the promised characteristics, are in conformity with the state of the art and meet the pertinent requirements of the authorities and technical associations and that they do not contain defects which either cancel out or diminish the value or the suitability of the Items for customary use or for the use as stipulated in the purchase order. The period of warranty is two years and begins with the delivery of the Items.

17.2 For supply parts which cannot remain in operation during the investigation of a defect and/or procedures to remedy a defect, the current warranty period is extended by the time during which operations are interrupted. For repaired parts or parts supplied as replacements, the warranty period shall recommence from this point in time, exceeding the statutory interruption.

SUPPLIER shall perform the Services diligently, professionally and in accordance with all applicable professional and industry standards. SUPPLIER shall perform the Services through the use of personnel and equipment appropriate for the type of Service to be provided and will use its best efforts in performing the Services. MMSI may inspect the results of SUPPLIER's efforts at reasonable intervals and will inform SUPPLIER if performance is unsatisfactory, in which event SUPPLIER agrees to correct deficiencies within a reasonable time to be agreed between MMSI and SUPPLIER. For Products and Services provided by SUPPLIER under this Order, all warranties shall run to MMSI and its customers.

## **22. Jurisdictions**

These Terms and Conditions and any purchase order shall be governed and construed in all respects by the laws of Switzerland. Place of jurisdiction for all disputes arising from this business relationship governed by these Terms and Conditions is Geneva, Switzerland. MMSI is furthermore entitled to file a claim against the Supplier at any other place of general or special jurisdiction.