

## General Conditions of Purchase of CTAO gGmbH

### 1. General items, Scope

1.1. These General Conditions of Purchase ("CTAO-General Conditions of Purchase") shall apply to the contractual relationship between Cherenkov Telescope Array Observatory gGmbH ("Principal") and the contracting party ("Agent"), unless otherwise agreed in writing. By submitting a tender, by returning an order confirmation, or by accepting or executing an order, the Agent implicitly accepts the CTAO-General Conditions of Purchase.

1.2. Any differing General Conditions of the Agent shall apply only if, and as far as, they are recognized expressly in writing, even if the Agent has referred to them and the Principal does not expressly object to them.

1.3. In bilateral commercial transactions, the CTAO-General Conditions of Purchase apply also for all future legal relations or following transactions between the Principal and the Agent without the need of an explicit reference to the CTAO-General Conditions of Purchase.

1.4. Order number, reference code, and the date of Principal's letters are to be quoted in all correspondence, including invoices.

### 2. Tender, order, confirmation of order

2.1. The Agent is required in his tender to adhere to the quantity, quality and execution specified in the Principal's inquiry or, if issued, the invitation to tender. Separate alternative tenders are permissible.

2.2. Tenders shall be submitted in duplicate and free of charge for the Principal. The Agent shall be bound to his tender for a period of one month.

2.3. No order shall be binding unless placed in writing and signed by the Principal's Managing Director or other representatives of the Principal. Verbal agreements shall be valid only if set down or confirmed in writing and signed by the Principal or other representatives of the Principal. The Agent shall confirm orders to the Principal without delay by means of the attached contract duplicate or confirmation form.

### 3. Prices

The agreed prices are fixed prices, excluding sales tax (Value Added Tax), free to place of use (unloaded), including packing and other ancillary costs.

### 4. Performance of contract, compliance with provisions

4.1. The Agent shall undertake to comply with relevant statutory, technical, and official provisions and requirements when performing this contract. Goods supplied or services rendered must comply with relevant safety, employment protection, accident prevention, and other legal requirements and technical regulations (according to the CE conformity marking). The Agent must calculate in any safety devices and conformity markings required in accordance with such regulations. The calculation shall form part of the supply, even if not expressly mentioned by the Principal in orders, inquiries, or tender invitations.

4.2. If the Agent has any doubts about the kind of performance desired by the Principal, then the Agent shall notify the Principal thereof in writing before contract closure.

4.3. All documents associated with the delivered item(s) (test records, factory certificates, drawings, plans, parts lists, manuals,

etc.) necessary for acceptance, operation, maintenance, and repair form part of the Agent's supply obligation, and shall therefore be furnished free of charge.

4.4. Subcontractors shall not be engaged by the Agent without the Principal's consent.

4.5. Hindrances that impede the proper execution of the performance shall be reported immediately in writing to the Principal by the Agent and the reasons for them shall be indicated.

### 5. Delivery periods

5.1. The agreed delivery dates are binding. The decisive criterion in determining compliance with agreed delivery dates or delivery periods is receipt of goods, free of defect, at the place of receipt and/or use specified by the Principal, or acceptance (see sec. 10) of the supply or service rendered by the Principal.

5.2. Acceptance of the delayed supply or service shall entail no waiver of possible claims to payment of contractual penalties or other damages. No explicit reservation of rights is required in this respect.

5.3. Where deliveries are made earlier than agreed, the Principal reserves the right to return the goods at the Agent's expense. If goods delivered early are not returned, they shall be stored until the scheduled delivery date by the Principal or by a third party at the Agent's expense and risk. In the event of early delivery, the Principal reserves the right to hold back payment until the agreed due date is reached.

5.4. Partial deliveries shall be accepted only on the basis of written agreement. When agreed partial consignments are sent, the remaining quantity scheduled for delivery shall be indicated.

### 6. Information and testing rights

6.1. The Principal and its authorized representatives are entitled to inform themselves on the Agent's premises, and within normal working hours, regarding performance of supply in compliance with the contract, to attend tests of the Agent and to conduct their own tests. The Principal shall be entitled to require that tests be performed by the Agent, within appropriate bounds. In such instances, the Principal shall bear the costs of its own personnel, materials and any tests that he orders. The costs of repeat tests resulting from defects for which the Agent bears responsibility detected during previous tests shall be borne by the Agent.

6.2. If subcontracts are awarded, then the Agent shall undertake to ensure that the subcontractor contractually agrees to grant the Principal's rights within the scope mentioned above with regard to information and tests conducted on the subcontractor's premises.

6.3. Any such tests shall not release the Agent from his obligation to rectify defects or from his general liability.

### 7. Alteration of contract, assignment of claims, offsetting

7.1. The Principal shall be entitled to request subsequent alterations to the nature of the goods or services within the limits of the Agent's technical capability. Any changes affecting prices, delivery time or other conditions must be agreed in writing and signed by the Principal's Managing Director or other representatives of the Principal.

7.2. The Agent may not assign any claims against the Principal without the Principal's prior written consent, which said consent shall not be refused without good cause. Sec. 354a HGB (Handelsgesetzbuch = German Commercial Code) shall remain thereby unaffected. The Agent may offset only outstanding amounts against undisputed or legally established counterclaims. The Principal shall be entitled to offset any claims of the Agent against its own counterclaims, including claims against the Agent arising from other contractual relationships.

7.3. The Agent shall enjoy rights of retention only to the extent that such rights are based on undisputed or legally established counterclaims arising from the same contractual relationship.

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

8.1. Each delivery shall be accompanied by two delivery notes that state the order number, a description of the goods, and the delivery date. Dispatch notices shall be sent to the Principal in the event of shipments of considerable duration or consignments of substantial size. The competent customs office must be indicated on the relevant shipping documents.

8.2. Risk shall pass to the Principal only when the goods are handed over to the Principal (unloaded) at their place of use. If deliveries include installation or assembly, or if they involve other legally required or otherwise agreed to acceptance procedures (see sec. 10), said risk shall pass to the Principal on acceptance (see sec. 10) of the supply or service.

#### **9. Insurance costs**

Transport insurance shall be stipulated in the name of, and debited to the Agent. The Principal shall not bear such costs.

#### **10. Acceptance**

10.1. If other performances over and above mere delivery have been agreed, the passing of risk shall not ensue until the performance has been accepted in its entirety by the Principal. Advance or part-payments on the purchase price shall signify neither the acceptance of the performance nor acknowledgement of its freedom from defects.

10.2. Prior or intermediate inspections shall merely be checks without any relevance for the passing of risk or the course of time periods.

10.3. If calendar periods are agreed in connection with inspections/acceptance, these shall serve to establish delays in rendering performance, but shall under no circumstances constitute automatic acceptance when they expire.

10.4. If a trial run is provided for, the acceptance shall be declared by means of a joint inspection report following a faultless trial run.

10.5. Acceptance shall be formally stated following flawless trial run if trial operation has been agreed to under contract. Such acceptance shall be subject to contract law provisions laid down in the BGB (Bürgerliches Gesetzbuch = German Civil Code).

#### **11. Title, confidentiality**

11.1. Title to and copyright in any documents belonging to the Principal, which the Principal has made available to the Agent, shall remain with the Principal. Upon demand, such documents shall be returned to the Principal without delay (with the exception of copies of documents which the Agent is legally obliged to keep).

Documents may only be used for the purposes specified in the contract, and must not be passed on to third parties without Principal's prior express written consent.

11.2. The Agent shall be obliged to maintain confidentiality in respect of all illustrations, drawings, calculations, and other documentation and information received. The obligation of confidentiality also extends to technical or commercial data not in the public domain, as well as to personal data. The Agent shall oblige the personnel it deploys to maintain confidentiality. The obligation of confidentiality shall also remain in force on completion or cancellation of the contract. Subcontractors shall likewise be subject to such obligation of confidentiality.

11.3. Materials of any kind provided by the Principal shall remain the Principal's property. These materials are to be labelled as such. They are to be stored, marked, and managed separately, and they are to be used in accordance with the principles of economical business management. Use of such materials is solely permissible for orders which the Principal has placed in writing. The Agent shall provide replacements in the event of diminished value or loss, beyond the scope of normal wear and tear or storage time, for which he himself is responsible.

11.4. If materials provided by the Principal are processed, converted, combined or mixed with other materials by the Agent, then the Principal shall acquire title to the new object in proportion to the invoice value of the processed, reformed, combined, or mixed materials relative to the value of the other processed materials at the time of processing or combining. The processing or converting shall always be performed on behalf of the Principal. The Agent shall hold any such co-owned new object in safe custody for the Principal free of charge.

11.5. Supplies and services rendered by the Agent shall not entail reservation of title.

#### **12. Invoice and payment**

12.1. Invoices shall be submitted in duplicate. The invoice must quote the Principal's contract number. The invoice shall be accompanied by necessary evidence, such as bills of lading, weight notes, time sheets, etc. If legally required information, supporting documentation, or the order number is missing, or if the order number is stated incorrectly, where responsibility for such an error lies with the Agent, the additional expenditure shall be charged to him.

12.2. Where the above requirements are not met, the Principal shall be entitled to request that the Agent corrects and resubmits such invoices. All payments are, as a matter of principle, subject to the proviso that delivery of goods or rendering of services is completed in compliance with contract. Such payments shall not impair the Principal's right to complain.

12.3. Unless otherwise agreed, payment shall be effected net cash within thirty days *after* receipt of a correct invoice but not before the contractual delivery or rendering of services and not before the acceptance acc. to 10 took place. Payment shall be deemed effected, if the amount due is credited to the Agent's account.

#### **13. Elimination of defects**

13.1. The Agent shall warrant careful and proper performance of his obligations under the contract. The Agent shall particularly warrant compliance with the Principal's stipulated specifications, drawings and other execution requirements (e.g. directives from authorities, professional associations, and trade associations) in

compliance with the state-of-the-art technology, and he shall warrant the quality, appropriateness and completeness of the supplied goods, with regard to material, design, and execution, and of the documents (drawings, plans, etc.) that constitute part of the delivery.

13.2. Any quality claims or other statements made with regard to the goods, the product, or the service rendered, whether contractually, in advertising, in analyses, in product brochures, or the like, shall be considered as agreed to characteristics under the law.

13.3. The Principle shall be entitled to cancel the contract and claim damages related to the full scope of supplies and services contracted, even in the event of only minor non-conformance with the agreed to characteristics or minor impairment of usability.

13.4. The obligation to complaint at bilateral commercial transactions, according to sec. 377 HGB, applies to the Principal in case of obvious defects only. The notice period shall then be two weeks. The Agent shall eliminate any defects in the supply or service rendered on demand, without delay and at no charge, including of any ancillary costs, either by way of repair, exchange of the faulty part or replacement delivery, at the Principal's discretion. Any further claims, in particular in respect of cancellation, reduction and/or damages, shall remain unaffected. In urgent cases, the Principal shall also be entitled, in consultation with the Agent, to eliminate the defects itself or to arrange for such defects to be eliminated by a third party.

#### 14. Proprietary rights, licences

14.1. The Agent accepts liability for ensuring that the delivered items are unencumbered by rights of third parties in Germany or in the intended destination country, and in particular that no third party patents, licenses, or other proprietary rights are infringed by the supply and use of the contracted items.

14.2. In the event of infringement of industrial property rights, the Agent shall be obliged to compensate the Principal for any resulting loss and shall indemnify the Principal against any such claims by third parties.

14.3. The Principal shall also be entitled, at the Agent's expense, to acquire from the holder of such rights the approval for delivery, commissioning, use, resale, etc. of the delivered items as necessary to fulfil the contractual purpose if the Agent is unable to acquire such rights, definitively refuses, or disregards such rectification.

14.4. The Agent grants the Principal free, non-exclusive, irrevocable licence to all industrial property rights, applications for such rights and inventions arising from performance of this contract in Germany or abroad. The Agent further grants the Principal irrevocable, free, nonexclusive right of use of all know-how and all innovations and improvements arising from performance of this contract.

14.5. The Principal shall be entitled to transfer to its shareholders' and subsidiaries licences and rights of use according to the previous paragraph. This shall also apply beyond the duration of

the contract. The Agent shall agree the above-mentioned rights in favour of the Principal expressly with its subcontractors.

14.6. The agreed prices shall contain property right charges and all of the necessary license remuneration.

#### 15. Advertising material

The Agent may refer to business relations with the Principal in advertising material only with explicit written consent from the Principal.

#### 16. Safety and working regulations

Relevant safety and working regulations of the Principal shall be observed in the event of goods supplied to or services rendered on premises of the Principal or its subsidiaries. For this purpose, said regulations shall form a component of the contract. The Agent is obliged to follow the instructions of the coordinator (technical officer) duly appointed by the Principal.

#### 17. Place of performance and venue for disputes

Place of performance for the Agent shall be Heidelberg or any other place of use designated by the Principal. The sole venue for all disputes arising from contracts shall be Heidelberg, provided the Agent is a commercial trader.

#### 18. Rescission, termination

18.1. Should Principal rescind the contract in the event of

- a dereliction of duty for which the Agent was responsible,
- inadmissible restriction of competition when the order was awarded,

Principal can demand that the conditions prevailing before the contract was concluded be recreated.

18.2. If Principal rescinds the contract for the reasons specified above, it can retain the services rendered up to that point if Principal has a use for them. These shall be charged in accordance with the agreed prices and/or in the ratio of the partial performance rendered to the contractual performance in its entirety on the basis of the agreed prices. Unusable performances shall be returned at the expense of the Agent.

The other statutory and contractual rights and claims by Principal arising from derelictions of duty by the contractor shall remain unaffected by this.

#### 19. Applicable law

Contracts shall be governed by the laws of the Federal Republic of Germany.

The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and German Private International Law shall not apply.