





# PURCHASING CONDITIONS – IRT Saint Exupéry

## Institut de Recherche Technologique - Aéronautique-Espace-Systèmes Embarqués

### 1. DEFINITIONS

“Purchase” means the acquisition of goods (merchandise) or services of any kind for a fee by IRT from a Supplier.

“Order” means the elements below depending on their presence:

- technical and administrative rules imposed on the parties for performance of the offer
- specific conditions for performance and technical specifications approved by the parties
- these General Terms and Conditions of Purchase
- the conditions described in call for tenders
- estimates issued by the Supplier.

In the event of a contradiction, the documents' order of precedence will be the order in which they appear above.

The Order constitutes the agreement binding the Supplier and IRT.

“Intellectual Property Rights” means all Intellectual Property Rights as defined in the French Intellectual Property Code and international conventions and more specifically, including, but not limited to, literary and artistic property rights, copyright, brands, designs and models, software, patents, etc.

“Supplier” means any seller or service provider receiving an Order.

“IRT” means IRT Saint Exupéry.

“Days” means all calendar days.

“Delivery” means performance of an Order by the Supplier and its provision to IRT as evidenced by a delivery note signed by IRT.

“Final acceptance” means certification by IRT that all elements of the Delivery comply with the Order.

### 2. PURPOSE

The purpose of these General Terms and Conditions of Purchase is to define the means of placing, performing and monitoring Orders between IRT and its Suppliers.

For calls for tender, IRT reserves the right to order one or more lots separately, and to not choose certain lots.

### 3. APPLICATION AND EFFECTIVENESS OF THESE GENERAL TERMS AND CONDITIONS OF PURCHASE

Any Purchase by IRT is exclusively and entirely governed by these General Terms and Conditions of Purchase.

No exceptions shall be permitted hereto except with specific conditions that have been duly accepted and approved in writing by IRT at the time of Order and which are sent to the Supplier.

In the event of a contradiction between these General Terms and Conditions of Purchase and the specific conditions of purchase, only provisions contrary to the latter will be applicable, provided they have been duly accepted and approved in writing by IRT.

In the event of a contradiction between these General Terms and Conditions of Purchase and any document issued by the Supplier, these General Terms and Conditions of Purchase shall prevail.

### 4. ORDERS

4.1 Purchases made by IRT must be subject to a prior written agreement (purchase order or contract) signed by an authorised representative of IRT and sent by any means. Only this document shall be binding on IRT.

4.2 Supplier acceptance of the Order implies acceptance of these General Terms and Conditions of Purchase as well as of IRT's technical specifications and specific conditions as defined by the Order.

To this end, the Supplier shall return a signed notice of receipt to IRT constituting full acceptance of the Order within five (5) days of the Order being sent.

Notwithstanding the provisions above, any start made on Order performance by the Supplier implies pure and simple acceptance of the Order.

4.3 Any modification to the Order requires an addendum accepted by the Parties under the same conditions as above.

### 5. DELIVERY

All Deliveries are made Delivered Duty Paid (DDP – Incoterm 2010) to the location indicated in the Order.

The Order stipulates the delivery dates, locations and times.

Should the location not be specified, it is considered to be the address of IRT's registered office at the time of Order performance.

Delivery times and locations are firm. They constitute essential elements of the Order and a performance obligation.

All deliveries must be made during IRT business hours:

- Monday to Friday, 9:00AM to 5:00PM.

All Deliveries must include a delivery slip on the outside of the package, including the following information:

- order number
- service reference number
- description of the products delivered: weight, method of transport, shipping date, Supplier identification

The Supplier undertakes to notify IRT twenty-four (24) hours in advance of Deliveries of materials with a gross weight of over 30 kilograms.

### 6. ACCEPTANCE – CONFORMITY CHECK

Purchases must be fully compliant with the Order or with the specifications appearing in the Order or whose reference appears in the Order.

If necessary, Final Acceptance will be granted after the merchandise has been started up, in accordance with the procedures specified by the Supplier and successful performance of the expected functions.

Final Acceptance marks the beginning of maintenance and warranty periods.

In no case shall signature of the delivery slip be considered acceptance of Purchases.

Final Acceptance is issued following the compliance check. This involves checking the following, without prejudice to clarifications and additional information appearing in the specifications:

- quantitative and/or qualitative compliance of the equipment, supplies or services to the specifications including functional, safety and quality insurance specifications
- documentation compliance with the equipment, supplies or services including quality insurance specifications
- compliance of the equipment, supplies or services with the operating manual
- provision of safety information necessary for the use and disposal of the equipment, supplies (including packaging) and registration data for substances
- proper operation of the solution implemented

Should the merchandise not comply with the Order or with the expected functions or merchandise delivered that was not ordered, or partially delivered merchandise, IRT will inform the Supplier in writing of its reservations and/or issue a “rejection note” within ten (10) days following Final Acceptance or thirty (30) days following start-up for products requiring a verification procedure in production mode (computers, electronics, etc.).

The Supplier must replace and deliver compliant or additional merchandise for partially delivered merchandise within a maximum of five (5) days free of charge.

After that time, IRT reserves the right to cancel the Order without notice.

The Supplier shall be responsible for recovering merchandise, assuming all expenses and risks.

Forty-five (45) days after notification, IRT reserves the right to destroy or dispose of said merchandise.

### 7. TRANSFER OF RISK AND OWNERSHIP

7.1 Unless it can be shown that IRT did not fulfil its obligations in compliance with the Supplier's instructions concerning the Products entrusted to it, the risks and ownership of the purpose of the Order shall be transferred only upon Final Acceptance by IRT for Purchases of movable property and equipment.

7.2 IRT's Final Acceptance of the Order implies an express waiver by the Supplier to invoke any title retention clause.

7.3 For Purchases of intellectual services, the Supplier transfers to IRT on an exclusive basis, in accordance with Article L. 131-3 of the Intellectual Property code, as and when services are provided, full results of the service and the rights or titles of intellectual property related to them, and of any creation made in performing the Order, and in particular reproduction, performance, adaptation, commercialisation and use rights, of all or part of the creations and for the entire statutory term of protection provided for by Article L. 123-1 of the Code above and various international conventions for the entire world.

“Creation” is understood as all specific documentation, studies, reports, computer programmes and in general, any product subject to copyright, created by the Supplier for IRT in performing this contract.

Rights are transferred permanently by the Supplier and shall survive the termination of contractual relations for any reason.

The transfer price is included in the amounts paid to the Supplier as part of performance of this contract.

Should the Supplier involve third parties in performing the contract, without prejudice to its subcontracting obligations, it undertakes to obtain transfer of the rights necessary to respect this Article from the third parties, and holds IRT harmless from any recourse arising for this reason.

Physical ownership of these creations will also be transferred to IRT as and when they are performed under the conditions of Article 7.1.

The Supplier waives any withholding lien on these creations.

All tools and methods used to perform the services remain the property of the Supplier.

### 8. SUPPLIER'S INFORMATION OBLIGATION – GOOD FAITH

The Supplier undertakes to provide IRT all necessary information, advice and warnings on the conditions of use of the purpose of the Order as well as on its ability to meet the needs defined by IRT.

The Supplier undertakes to inform IRT of regulations in force, including standards, related to the purpose of the Order.

It shall inform IRT of any past or future modifications made to these regulations, of which it becomes aware.

The Supplier undertakes to perform the Order in good faith, in accordance with regulations, and in accordance with state of the art on the day of performance of the Order.

### 9. CONFIDENTIALITY

All information shared (hereafter “confidential information”) by IRT or information which the Supplier comes to know in performing the Order remains the property of IRT and is considered strictly confidential, without IRT being required to indicate its confidential nature.

The Supplier undertakes to respect the obligations resulting from this Article for the entire duration of Order performance as well as for ten (10) years after expiry thereof.

The Supplier guarantees IRT that its personnel and suppliers respect this Article.

By the nature of IRT's activities, the Supplier's employees working on IRT's site must be apt to receive defence clearance.

### 10. PRICES – INVOICING – PAYMENT

10.1 The prices indicated by the Supplier are indicated tax free per merchandise delivered or service performed, compliant with the Order.

These prices are firm and final and are Delivered Duty Paid according to Incoterm “DDP” (2010).

Prices are firm and final for the entire duration of Order performance.

A Final Acceptance report is drafted for this purpose. It triggers invoicing elements in accordance with Article 10.3.

Prices shall be deemed to include all expenses incurred by the Supplier for Order performance.

Any reimbursements of additional expenses must have been accepted by IRT in advance on the principle and the amount, and must have supporting documentation.

10.2 Each invoice includes the Order number, the delivery slip date and number, the products (or services) invoiced as well as unit prices tax free and tax included.

10.3 Without prejudice to application of Article 6 hereof, invoices are payable within thirty (30) days end of month from the Delivery date unless otherwise agreed.

Invoices are sent to the address indicated by IRT for this purpose. Payments are made by cheque or wire transfer at IRT's discretion.

### 11. LIABILITY – INSURANCE

11.1 The Supplier is subject to a performance obligation for Order performance.

The Supplier is liable for damage of any kind occurring during Order performance.

IRT shall be compensated according to the principle of full compensation notwithstanding any clause to the contrary appearing in the Supplier's general terms and conditions of sale.

Therefore, the Supplier is liable to IRT particularly for defective products within the meaning of Articles 1386-1 et seq. of the Civil Code.

The Supplier shall be held liable for any physical, material and/or immaterial damage (incidental or consequential) caused by its personnel, agents or principles, as part of the Order and its risks hereunder, with no recourse whatsoever against IRT.

The Supplier shall be held liable for harmful consequences of any kind, resulting from the performance of its obligations hereunder.

11.2 The Supplier must have taken out an insurance contract with a reputedly solvent insurance company covering all risks it bears by virtue of its activities hereunder.

It undertakes to keep it valid for the needs hereof and to pay all premiums due to the insurance company.

The Supplier undertakes to pay and provide proof of payment of all premiums so that IRT may assert its rights in its capacity as beneficiary.

In any case, the deductible imposed by the insurance company will be paid by the Supplier.

On request by IRT, the Supplier shall produce a copy of the insurance policy and/or a certificate of insurance stipulating the activities covered, the period of coverage, the type and amount of coverage, exclusions and that the premium has been paid.

In no case may the provisions of this Article be interpreted as constituting a limitation of liability.

### 12. WARRANTIES

The products, merchandise and/or services must meet all laws, regulations and standards in force in the European Union at the delivery date.

Equipment is covered by the manufacturer's full warranty at all authorised maintenance centres.

The warranty includes parts, labour and travel. It covers all elements of the configuration provided and takes effect on the date of Final Acceptance which is the purpose of the Order.

If during the warranty period, a systematic disruption is observed affecting the equipment supplied, such that ten percent of the parts of a model (with at least two breakdowns) are affected by the same defect, IRT is entitled to request replacement of the defective parts on all apparatus.

During product design and packaging and/or when choosing materials, the Supplier undertakes to take all necessary measures to meet legal and/or regulatory requirements regarding environmental protection, health and safety, and labour law.

In particular, the Supplier shall submit to IRT the documents listed in Article D8222-5 of the Labour Code concerning the undeclared work and R.341-36 of the Labour Code concerning foreign employees.

The Supplier will pass on these obligations to its subcontractors in connection with the Order.

In addition to the legal warranty against hidden defects, the supplies are also covered by a contractual warranty for a period of twelve (12) months beginning with the Final Acceptance of said supplies.

Malfunctioning supplies will be removed by the Supplier within forty-eight (48) hours of notification of the malfunction by IRT.

Notification will be made by e-mail, fax or simple letter.

The Supplier undertakes to repair or exchange defective supplies within three (3) days. Supplies are removed at the Supplier's expense and risk.

Should the Supplier fail to remove the defective supplies within forty-eight (48) hours, IRT may return the supplies at the Supplier's risk and expense.

If equipment under warranty is repaired or replaced, the warranty will continue under the same conditions for the purpose of the repair.

Furthermore, the Supplier guarantees that it does not infringe on any intellectual property, industrial, artistic or other private right of third parties on the merchandise delivered.

The Supplier holds harmless IRT against any claim of any kind, made by a third party, and based on such effects.

The Supplier also holds IRT harmless, without any reservation whatsoever, of any foreclosure on the products which are the purpose of the Order.

The Supplier shall cover all costs, compensation and damages resulting from such claims.

### 13. FORCE MAJEURE

Cases of force majeure suspend performance of the parties' obligations.

Should the Supplier intend to invoke a case of force majeure to justify failure or lateness in performance, must notify IRT immediately upon occurrence of the event and within twenty-four (24) hours of occurrence of the event.

In all cases, the Supplier must do its utmost to limit the duration and effects of the force majeure.

Should the Supplier fail to respect the provisions above, IRT reserves the right to terminate the contract on the grounds of the exclusive fault of the Supplier, without formal notice or any other prior legal or judicial formalities.

Should the contract be suspended after that time for a period of one (1) month, it may be terminated at the initiative of either Party by registered mail with notice of receipt.

### 14. TERMINATION

Should the Supplier breach all or some of its contractual obligations, following official notice by registered mail with notice of receipt, gone unheeded for a period of fifteen (15) days, IRT may demand:

- for Orders with immediate performance: cancellation of the sale
- in this case, the sale prices will be refunded and the products held at the Supplier's disposal who will recover them at its own expense and risk
- for Orders with successive performance: IRT may cancel or terminate the sale

In the event of termination of an Order with successive performance, the Purchase will be considered as forming an indivisible whole.

The sale prices of all merchandise will be refunded and the merchandise held at the Supplier's disposal who will recover it at its own expense and risk.

In the event of termination of an Order with successive performance, the contract will be terminated for the future.

The party of the Order that has already been performed under these provisions will not be called into question.

- in the event of an Order for a service, IRT may request termination of the Order

In all cases, the end of contractual relations does not exclude the possibility of a claim for damages for the prejudice suffered by IRT.

By joint agreement between the Supplier and IRT, successive orders to the Supplier will in no case be considered as an established commercial relationship nor an exclusivity agreement between the parties, such that the Supplier formally releases IRT of any obligation to provide notice in the event one or more Orders are not renewed.

Failure by IRT to renew an Order shall not grant any entitlement to the payment of compensation.

### 15. TRANSFER – SUBCONTRACTING – CHANGE OF CONTROL

In no case shall this contractual agreement be transferred in whole or in part by the Supplier, in exchange for payment or free of charge, without IRT's prior written agreement.

The Supplier is not authorised to subcontract the services covered by this Order without IRT's prior written agreement.

In this case, the Supplier undertakes to respect the provisions of the law of 31 December 1975 regarding subcontracting, particularly concerning IRT's approval of the subcontractor and of the conditions of payment.

In this case, the Supplier passes on the obligations hereof to its subcontractors and shall remain liable to IRT for order performance.

IRT may terminate the contract by right in the event the Supplier is taken over under Article L.233-3 of the Commerce Code by a third party not having received IRT's approval.

### 16. APPLICABLE LAW – COMPETENT JURISDICTIONS

**EXCEPT WHERE OTHERWISE PROVIDED FOR AND WITHIN THE FRAMEWORK OF AN INTERNATIONAL CONTRACT FOR WHICH THE PARTIES EXPRESSLY AGREE THAT THE ENGLISH VERSION HEREOF PREVAILS, ONLY THE FRENCH VERSION HEREOF SHALL PREVAIL BETWEEN THE PARTIES.**

All Orders from IRT are subject to French law, regardless of their form, to the exclusion of all international conventions and particularly of the Vienna Convention of 11 April 1980 on the international sale of goods.

**SHOULD THE PARTIES FAIL TO SETTLE AMICABLY ANY DISPUTE CONCERNING THESE GENERAL TERMS AND CONDITIONS OF PURCHASE, AS WELL AS THE ORDERS AND CONTRACTS THEY GOVERN, THE DISPUTE SHALL BE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE COURTS IN THE JURISDICTION OF IRT SAINT EXUPÉRY'S REGISTERED OFFICE, EVEN IN THE EVENT OF MULTIPLE PROCEEDINGS OR THE INTRODUCTION OF THIRD PARTIES. AN ACTION TO ENFORCE A WARRANTY OR EMERGENCY PROCEEDINGS.**