

## General Procurement Conditions of OSRAM Opto Semiconductors, Inc.

an affiliate of ams-OSRAM AG,  
Tobelbader Strasse 30, 8141 Premstaetten, Austria

### 1 Scope

These General Procurement Conditions ("GPC") apply to all purchases of Deliverables by ams. Any terms and conditions contained in quotations, acknowledgments or other forms of the Supplier that are in addition to or differ from these terms and conditions are hereby rejected.

### 2 Definitions

All capitalized terms excluding headlines in these GPC shall have the following meanings:

"Affiliate" means any existing or future entity: (i) directly or indirectly controlling a Party; or (ii) under the same direct or indirect control as a Party; or (iii) directly or indirectly controlled by a Party. As used herein, the term "control" (including any variations thereof) means ownership of securities representing fifty percent (50%) or more of the voting capital stock or other interest, having voting rights with respect to the election of the board of directors or similar governing authority, or any other power by contract or in any other form which entitles such named entity to the respective voting rights.

"ams" means as the case may be, either ams-OSRAM AG, or any of its Affiliates referring to or attaching these GPC.

"Background Intellectual Property Rights" means any Intellectual Property Rights owned by the Supplier at any time during the applicability of these GPC and not resulting from the performance of work or services pursuant to these GPC.

"Confidential Information" means all non-public information whether disclosed directly or indirectly to Supplier by ams or by third parties or that Supplier receives knowledge of or access to, before, on or after the date of an individual PO and which is designated as confidential or which, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential whether it is submitted orally, in writing or electronically.

"Deliverables" means the goods, materials, products, software, services or items identified or listed and specified in a PO.

"Intellectual Property Rights" means any intellectual property rights, including without limitation inventions, patents, utility patents, know-how, designs, semiconductor topography rights and copyrights and any other statutory intellectual proprietary rights worldwide of whatever nature as well as corresponding applications.

"Nonconforming Deliverables" means any Deliverables that do not conform to the specifications in the PO, other applicable specifications, or which otherwise do not conform with Supplier's warranties.

"Parties" means the parties to a PO, i.e. ams and the Supplier, each individually referred to as a "Party".

"PO" means purchase order as set out in more detail in clauses 3 and 5.

"Supplier" means the person, firm or corporation from whom Deliverables are purchased pursuant to a PO.

### 3 Order Process by PO

All conditions, specifications, standards and other appendices attached to the PO or listed therein shall form an integral part of the PO. In case of conflicting provisions, they shall apply in the following order of precedence:

- (i) frame agreements (including quality assurance agreement) between the Parties
- (ii) if (i) does not exist, frame agreements agreed between ams-OSRAM AG and/or its Affiliates with Supplier and/or its Affiliates
- (iii) the PO itself (including any side agreements made) and any written mutual change to it by the Parties
- (iv) these GPC
- (v) any of ams' packing, marking and shipping instructions

- (vi) any agreed technical specifications
- (vii) any general specifications and ams' standards.

Any differing conditions of sale and delivery by the Supplier shall only apply, and changes to the PO shall only be effective, if they have been expressly agreed by ams in writing. Acceptance of Deliverables or payment does not constitute such acknowledgement.

#### **4 Quality**

The Supplier agrees that it will not change any specifications, form, fit, function, design, appearance, materials technology, manufacturing process or manufacturing facilities for the Deliverables or make any other change that affects or could reasonably affect the quality, performance or compliance with the warranties set forth in these GPC without ams' prior written approval.

The Supplier shall be obligated to enclose a complete and easy-to-understand operating manual in at least the English language, to keep all necessary documentation and, to monitor products exactly and to recall defective goods at its cost and immediately, if necessary, to submit the production documents to ams and to provide any and all support, as well as to name the producer and/or importer, if required, without undue delay.

The Supplier shall maintain a certified quality management system in conformance to ISO 9001. The certification shall be done by an accredited certification body.

Deliverables will be marked for identification purposes with sufficient information to identify the source, date of production and batch or lot.

#### **5 Confirmation of PO by the Supplier**

The PO becomes a binding contract upon confirmation by the Supplier, or commencement of performance, whichever occurs first. POs not expressly accepted in writing by the Supplier shall be deemed to be accepted two (2) business days after being received by the Supplier unless the Supplier notifies ams in writing to the contrary within two (2) business days of receiving the PO.

#### **6 Subcontractors**

The Supplier shall not, without ams' prior written consent, subcontract, directly or indirectly at any level of the performance of the PO or any part thereof.

#### **7 Purchase of Materials for Use in the Deliverables**

Only in relation to POs issued for customised Deliverables, before placing orders with sub-suppliers for, or purchasing any materials for use in the Deliverables that comprise multiple components, the Supplier will, upon ams' prior request, provide ams with a complete bill of materials (BOM) for such Deliverables, as applicable, listing the supplier(s), part number(s), lead time(s), and cost(s) of each material therein, as applicable.

#### **8 Delivery**

Time is of the essence. The agreed delivery dates and time periods for the delivery are binding. If a delivery or service period is defined in the PO, the delivery or service period starts with the acceptance date of the PO. For a delivery to meet the delivery date, the receipt of the Deliverables by ams is the relevant point of time. If no delivery or service period or delivery date is separately agreed, the delivery or service shall be due three weeks from the date of the PO.

Delivery and shipment shall be carried out according to the delivery conditions stated in the PO. If the Supplier does not observe the applicable delivery conditions, the Supplier shall bear any additional costs resulting therefrom.

ams shall be notified immediately of any circumstances, which prevent the agreed delivery dates and time periods for the delivery from being met. In case of an early or late delivery, as well as in the event that the Supplier delivers more, fewer or

different Deliverables than ordered, the prior written consent of ams is required, and ams reserves the right to reject the delivery at the Supplier's expense or, in case ams accepts the delivery, to amend the invoice accordingly to the difference between the PO and the actual delivery as applicable.

Any delayed delivery, i.e. that the agreed delivery dates and time periods are not met and the actual delivery occurs on a later date or time period, shall give ams the right to terminate the PO, totally or in part, either immediately or with granting an appropriate additional grace period, without any further liabilities or payment obligations arising for ams out of such termination; or to demand performance on another date. In case of termination the Supplier shall compensate ams for any damages arising out of or in connection with the late delivery including any price difference between the original purchase price agreed between the Supplier and ams and the purchase price agreed between ams and an alternative supplier.

Each delivery must come with any and all data sheets, assembly and processing information or notes about special characteristics of the material as well as the Deliverable.

Supplier agrees to take all actions necessary in order to ensure that there is no interruption in the supply of Deliverables to ams.

## **9 Packing for Transportation and Shipment**

If and to the extent no packing standard is agreed upon, the packing must be made correctly and in accordance with applicable packing standards and Supplier shall package all items in functional, flawless, commercial standard types of packing to secure safe transportation and handling. Costs and risks resulting from packing that does not comply with the requirements must be borne by the Supplier.

Any charges for boxing, crating, handling, storage or other packing requirements shall be included in the prices as specified in the PO. Unit load devices and packing material shall become ams' property. Entitled return shipments shall be at the risk and expense of the Supplier.

The Supplier shall mark all containers with necessary lifting, handling and shipping information, as well as PO numbers, release numbers, dates of production, dates of shipment, regulatory compliance information and the names of the consignee and consignor. An itemized packing sheet must accompany each shipment. The Supplier will clearly identify and mark the relevant HS Code and country of origin of all Deliverables delivered and will indemnify ams with respect to any expenses, duties, penalties, damages, settlements, costs or attorney's fees incurred by ams in connection with the Supplier's failure to identify or misidentification of the required HS Code and/or country of origin.

All products shall be delivered to the location specified in the PO. Unless otherwise specified in the PO, in particular by defining a delivery term, the title and risk of loss of the Deliverables shall pass to ams upon delivery to ams.

## **10 Inspection of Deliverables**

Upon receipt of Deliverables, ams shall within a reasonable period of time conduct an incoming inspection of the Deliverables to verify whether ams has received the identity and the number of boxes of the Deliverables reportedly sent to ams as indicated on Supplier's packing list, and to detect any visible damage from transportation at the outer packaging. Apart from that ams is neither obliged to perform an incoming inspection of Deliverables, nor obliged to notify defects detected within a certain time limit. Payment for Deliverables prior to inspection will not be construed to be an acceptance of Deliverables. If any Deliverables contain Nonconforming Deliverables, ams shall have the right to reject such Deliverables. Nonconforming Deliverables may be returned at ams' discretion to the Supplier at the Supplier's risk and expense.

For the purposes of this Clause 10, any reference to ams shall also include any entity, supplier, vendor or business partner acting on behalf of or upon the instructions of ams in the receipt of any Deliverables.

## **11 Business Correspondence, Required Documentation**

Any and all business correspondence shall exclusively be exchanged with ams' procurement department and with ams' responsible employee or representative introduced to the Supplier as the responsible contact person(s). Documentation such as waybills, train route notes, train boxes, mail package cards, shipment notifications, shipment notes, packing slips,

invoices, change notifications and similar documents as well as all correspondence must always feature the order number, order date, item and designation of goods as well as the name of the responsible employee or the responsible department. Customs declarations and customs goods codes must also be stated, or it has to be ensured that this information will be included. In case of deliveries from the EU zone, the VAT identification code must be stated. The Supplier shall be fully liable to ams for any loss or expense resulting from any failure to comply with these obligations.

## **12 Price and Payment Conditions, Invoices**

If not otherwise agreed in writing between the Parties, all prices are fixed prices, including value-added tax as well as all other taxes, duties, packaging fees and other additional charges of any type, as for material price, freight tariff tax or social charge increases, are excluded. The Supplier warrants that the prices for the Deliverables sold hereunder are not less favourable than those extended to any other customer for same or similar Deliverables.

Payments shall be made by ams on the first (1st) business day of the month following the expiry of a period of ninety (90) days after receipt of an invoice correctly issued in accordance with ams' GPC and ams' receipt of the Deliverables. The payment of invoices cannot be construed as a waiver of any of ams' claims and rights.

Invoices have to be sent to ams' then-current invoice submittal system, stating any and all order and delivery data and specifically referencing the applicable PO number. In case of work performances and assembly work, the time documentation confirmed by ams shall be enclosed. Invoices issued contrary to ams' GPC shall be deemed as not served.

Notwithstanding the foregoing, ams shall be entitled to set off any amounts owed to Supplier against any claims which ams may have against the Supplier.

## **13 Tax**

Except as otherwise specifically provided in any PO, Supplier shall be liable for and shall pay any sales use excise or other tax or custom duty or fee which may be imposed upon any of the Deliverables or their sales, use or delivery. Where any relevant taxation authority imposes any income tax on the payment by ams to the Supplier and requires ams to withhold such tax, ams may deduct such tax from the payment to the Supplier and remit such tax to the relevant taxing authority on behalf of the Supplier. The determination on the applicability of such withholding tax is at ams' sole discretion. Upon reasonable request by the Supplier, ams shall furnish the Supplier with tax receipts or other documentation evidencing the payment of such withholding tax. All sales, use, excise or similar taxes to be paid by ams must be itemized separately on any proposal, quote or bid for the Deliverables and on Supplier's invoices.

## **14 Compliance**

- (i) Supplier will comply with the principles and requirements of the Code of Conduct for ams Suppliers, or such other similar document, which has been provided to and acknowledged by Supplier.
- (ii) The Supplier and all persons acting on its behalf shall comply with all national and international regulations applicable to it within the scope of its business relationship with ams, in particular those relating to the combating against corruption, cartels and money laundering. In particular, the Supplier undertakes not to participate actively or passively, directly or indirectly, in any form of bribery or to offer or grant, promote or accept any benefits that violate applicable national and international anti-corruption regulations.
- (iii) Within the scope of its own organization, the Supplier undertakes to comply with the respective legal regulations concerning the treatment of employees, environmental protection, occupational health and safety and to enforce them also in relation to any subcontractors. The Supplier further undertakes to comply with the principles of the UN Global Compact initiative regarding the protection of international human rights. In particular, the Supplier will not practice or tolerate any form of modern slavery, forced and child labor or human trafficking. Furthermore, the Supplier undertakes to strictly prohibit any form of discrimination in its operations on the basis of race or ethnic origin, skin color, gender, religion or philosophy of life, disability, age or sexual identity.
- (iv) ams may withdraw from or terminate the contract if the Supplier does not fulfil its obligations as per this clause 14. Other statutory or contractual rights of withdrawal and termination remain unaffected.

## 15 Service-related provisions

- (i) In relation to Deliverables consisting of services, in order to provide such services, the Supplier has to employ skilled and competent personnel. The Supplier is obliged to ensure that work permits which might be required are available. Services have to be provided according to the current state of the art and industry standards. The Supplier shall inform ams on the status and progress of the services which are carried out for ams.
- (ii) ams is entitled to request changes in the scope of services unless these are unacceptable for the Supplier. If the change results in additional costs, the Supplier has to inform ams accordingly without delay and before the changes are implemented.
- (iii) Results of work services are subject to an acceptance test. Upon finalization of the acceptance test, ams will declare acceptance insofar as the results provided are free from defects. If the provision of information and/or documents is required for the performance of services, ams will make these available to the Supplier in due time before the service is performed. Supplier shall immediately request further information and/or documents if needed.
- (iv) Insofar as services are required to be provided in ams' offices or at ams' premises, ams will grant the Supplier the access required, subject to reasonable security and compliance restrictions. Any persons employed or engaged by Supplier in connection with the performance of the Services shall be Supplier's employees or contractors. Supplier will be solely responsible for their supervision, daily direction and control, wages, withholding income taxes, providing unemployment and disability benefits, and the manner and means through which the Services will be accomplished.

## 16 Warranty

For a period of 36 months (or such longer period as may be provided under applicable law) as of receipt of the Deliverables, the Supplier warrants that it has good and transferable title to the Deliverables and that all Deliverables:

- (i) conform to the PO, including all descriptions as well as any drawings, specifications, samples, or models furnished by ams or furnished by the Supplier and approved by ams,
- (ii) are free from any defects and errors,
- (iii) are merchantable and fit for their intended purpose,
- (iv) are new, not refurbished or reconditioned, and
- (v) are in conformity with any applicable industry standards as well as properly contained, packaged, marked and labelled in accordance with ams' requirements and all applicable laws relating thereto.

The Supplier further warrants that all Deliverables and their use do not infringe any third-party Intellectual Property Rights.

If there is reason to assume that an entire lot of Deliverables are defective due to samples drawn, the entire lot shall be deemed to be Nonconforming Deliverables and invoice for the entire lot of the Deliverables shall not fall due.

In case of Nonconforming Deliverables, ams reserves the right to choose between a price reduction, free rectification and exchange; in case of major defects, ams shall be entitled to full or partial termination of the PO. Such actions shall be in addition to other remedies which ams may have pursuant to applicable law. On ams' request, the Supplier shall immediately exchange or rectify Nonconforming Deliverables at its own risk and expense in order to provide Deliverables free from defects. If rectification or exchange has been requested, the warranty periods commences anew with receipt of the rectified or exchanged Deliverables.

In case of unjustified excess or insufficient supplies, or in case of quality deviations, the Supplier shall indemnify and hold harmless ams for all expenses resulting from additional inspection, packaging, return shipment or storage. Return shipment of quantities in excess or not ordered shall be at the expense and risk of the Supplier in all cases.

## 17 Product Liability Indemnification

The Supplier is obliged to indemnify and hold harmless ams from third party damage compensation claims arising from bodily injury and/or damage to property due to a defect in a Deliverable. If Supplier subsequently learns of any product defect or potential safety issues, the Supplier shall immediately notify ams about these circumstances in writing. In this context, the Supplier is also obliged to refund any expenses which arise from or in connection with a product recall undertaken by ams or required by law. ams will inform the Supplier on the content and extent of the product recall measures insofar as possible and reasonable.

## **18 Supplier's Liability, Indemnification**

The Supplier is liable and shall indemnify and hold harmless ams, its officers, directors, agents, representatives, customers and employees from any and all claims, liabilities, damages, and expenses (including reasonable attorneys' fees and proper defense costs) arising out of, connected with or resulting in whole or in part from any acts or omissions of, or breach by, the Supplier, its subcontractors, its sub-suppliers or other personnel under or in connection with the PO or these GPC. This indemnity shall apply without regard to whether the claim, damage, liability or expense is based on a breach of contract, warranty, negligence, strict liability, and/or other tort. This indemnity shall survive delivery and acceptance of Deliverables.

## **19 Third Party IP Indemnity**

- (i) The Supplier has to deliver the Deliverables free of third party Intellectual Property Rights or any other third-party rights, otherwise Supplier shall secure, at its sole cost and expense, all necessary rights, licenses, consents, approvals and authorizations necessary for ams to use all third-party rights as incorporated in or used in conjunction with the Deliverables. If third party Intellectual Property Rights are or will be infringed by the supplied Deliverables or their use, the Supplier is required to make reasonable efforts to provide ams with an unlimited right of use of the Deliverables, otherwise ams is entitled to return or cancel the Deliverables and receive a full refund of payments made.
- (ii) The Supplier is obliged to indemnify and hold harmless ams from any third party claims raised on the basis of a violation of third party Intellectual Property Rights as stipulated in clause 19(i) and to reimburse ams for all reasonable costs, fees, expenses and damages incurred in relation with the claim.
- (iii) Upon written request from ams, Supplier has to conduct the defense against such claim at its own expenses. If the Supplier conducts the defense against such claim in the name of ams, the Supplier is obliged to always safeguard ams' commercial interests and to keep ams informed about any significant steps. The Supplier is not allowed to enter into a settlement which affects ams' rights and/or interests without ams' express written approval, whereas ams will not withhold its approval arbitrarily.
- (iv) Further claims under statutory law for a defect of title of the Deliverables supplied to ams remain unaffected.

## **20 Tooling and Documents**

All specifications, drawings, models or other documents and data furnished by ams and all tools, dies, molds, jigs, fixtures, patterns, machinery, special test equipment, special taps and gauges, which have been furnished, paid for, or charged against ams, shall be deemed ams' property, and shall be treated as confidential information in accordance with clause 25 below. Such items shall be returned upon ams' request at any time, but no later than upon full completion of the related contract. ams shall retain ownership of any materials, parts, containers and/or special packaging provided by it to the Supplier. They shall be labelled as ams' property and may be used only for the fulfilment of PO placed by or on behalf by ams or its Affiliates and shall only be used in accordance with mutually agreed terms and conditions. The items provided by ams shall be kept in a good condition by the Supplier. Their loss must be reported to ams immediately. ams reserves the right to claim damages.

## **21 Provided Materials**

- (i) All materials provided by ams remain property of ams, and ams is considered the manufacturer of goods manufactured using the materials and retains or automatically acquires property rights to the goods produced through the processing of these materials. The materials and objects shall be labelled as ams owned and stored for ams in a safe place and insured against risks such as fire and theft.
- (ii) If ams has provided materials to Supplier, Supplier shall send monthly stock reports to ams on such ams material, and ensure that the accuracy of such stock reporting is at least 97%.
- (iii) Pallets and other transport materials supplied by ams remain ams' property and must be returned to ams. ams reserves the right to claim compensation for any unreturned transport materials provided.

## 22 IP Rights

Ownership of any Intellectual Property Rights shall not be changed by the terms in these GPC unless otherwise stated herein. The Supplier hereby grants to ams a non-exclusive, irrevocable, fully paid up, worldwide license to its Intellectual Property Rights and/or all other rights required for producing, offering, putting on the market or using Deliverables as well as importing or possessing Deliverables for these purposes, without prejudice to clause 23. If the Deliverable is a process directly producing a product, Supplier grants the same licenses with respect to such product.

## 23 Rights to Results from Services

- (i) The results of Deliverables consisting of services (in the following referred to as "Results") shall be considered a "work for hire" and become ams' property upon their completion and in their respective state of processing. The Supplier will properly store such Results for ams until they are physically provided to ams. If, for any reason, any of the Results do not constitute a "work made for hire," Supplier irrevocably assigns to ams, without additional consideration, all rights, title and interest to the Results, including all its Intellectual Property Rights. Supplier waives any moral rights it may have in any Results. In the event that for legal reasons ams cannot become the sole owner to all rights in the Results, ams, upon their completion, is hereby granted the exclusive, transferable, sub-licensable, worldwide, fully paid up, unlimited right to use the Results itself or have them used partly or fully by third parties in all known and unknown ways of use, to copy, exploit, distribute, change and make them publicly accessible, to publish or to use them, all in a modified or unmodified form. Where Deliverables include Background Intellectual Property Rights, ams is hereby granted the non-exclusive, transferable, sub-licensable, worldwide, fully paid up, unlimited right to use Background Intellectual Property Rights as part of the Results itself or have them used partly or fully by third parties in all known and unknown ways of use, to copy, exploit, distribute, change and make them publicly accessible, to publish or to use them, all in a modified or unmodified form.
- (ii) If inventions or protectable ideas/proposals are created during the provision of service for which statutory rights can be applied, the Supplier shall promptly inform ams thereof in writing. ams, at its sole discretion, may file for patents and other statutory protection in any country in its own name as it sees fit, and maintain or abandon those rights at any time. If required, the Supplier shall reasonably assist ams with regard to the filing of patents and other statutory rights on such inventions or protectable ideas/proposals free of charge, in particular provide any information required without undue delay and take all measures reasonably required; the Supplier will refrain from any act that might interfere with ams' application for said rights and efficient use thereof. In particular, the Supplier must not apply for any such right in its own name or a third party's name and must not support a third party in applying for such rights. The Intellectual Property Rights arising on the basis of any such registration shall belong to ams.
- (iii) Unless otherwise agreed in a given case, the Supplier waives the right to be mentioned as author with regard to the results obtained.
- (iv) The Supplier is obliged to ensure that the inventions or protectable ideas/proposals created during the provision of the services can be transferred to ams without additional costs for ams, for instance by way of respective agreements with the persons involved in the implementation of the Results.
- (v) In relation to its employees, freelancers or third parties insofar as they are involved in the provision of services in accordance with clause 6, the Supplier will ensure in written agreements with these employees, freelancers or third parties that the rights as per clauses 23(i) to 23(iii) are secured and will not be affected by the termination of the

contracts between the Supplier and the third parties. In case of breach, the Supplier will reimburse ams for all damages and expenses incurred in this respect, including the reasonable costs for legal defense, and will indemnify and hold harmless ams from any third-party claims, unless the Supplier is not responsible in this regard.

- (vi) The granting of the aforementioned rights is covered by the contractually agreed remuneration.

## **24 Software**

For software (including without limitation any updates thereto, together "Software"), pertaining documents, and all subsequent additions necessary to operate and/or support the Deliverables or their use, the Supplier hereby grants to ams a non-exclusive, perpetual, royalty-free, worldwide right and license to use, reproduce, prepare derivative works of and distribute the Software in connection with ams products, including the right for sublicensing. For any Software created for ams pursuant to services rendered under these GPC, clause 23 prevails. Any individual software licensing agreement prevails over any provision in these GPC regarding a transfer of rights or a license grant.

Supplier has and will have full and sufficient right, title and authority to assign or grant the rights and/or licenses granted to ams.

The Software does not and will not infringe any third-party Intellectual Property Rights or any other third-party rights. Clause 19 shall apply analogously.

Furthermore, Supplier represents and warrants that the Software does and will: (i) perform the functions, and comply in all material respects with the documentation; (ii) comply with all applicable laws, regulations, and industry standards; and (iii) will be free of any computer code or instructions that may disrupt, damage or interfere with the use of the Software or related computer facilities or which allow for application code access through the bypassing of any security features, e.g. malicious code, viruses, "back doors" or "trap doors."

If the Software contains any open source software Supplier must provide a schedule of all open source files used, indicating the relevant license and including a copy of the complete text of the applicable license agreement. Supplier may not permit or cause any ams software or information to become subject to any open source licenses that would require distribution of underlying source code.

## **25 Confidentiality**

The terms contained in these GPC, and all information disclosed by either Party to the other, in connection with the PO, including, without limitation, all technical, commercial and financial data and all proprietary information, shall be kept strictly confidential. Neither Party shall disclose any such confidential information to any third party (other than Affiliates of ams) and shall not use any such confidential information for any purpose other than as agreed between themselves. In the event of a violation or suspected violation of this confidentiality obligation, ams reserves the right to seek injunctive relief in any court of competent jurisdiction. No reference may be made to business relations with ams for advertising purposes unless ams has given its written approval. Should Parties enter into a separate Non-Disclosure Agreement (NDA) and inconsistencies arise between such NDA and this clause 25, the NDA shall prevail.

## **26 Data Protection / Data Privacy**

ams and the Supplier authorize to release to the respective other Party and any of its Affiliates (the "Relevant Companies") any and all personal or professional data that is necessary or desirable for administration and/or fulfilment of any individual PO and these GPC (the "Relevant Information").

ams and the Supplier undertake to fully comply with any applicable personal data protection laws in applicable jurisdictions, including with the General Data Protection Regulation (GDPR). ams and the Supplier shall ensure compliance with all legal data provisions including but not limited to the GDPR, particularly in regard to the lawfulness of data processing under joint controllership. ams and the Supplier shall take all necessary technical and organizational measures to ensure that the rights of data subjects, in particular those pursuant to Articles 12 to 22 GDPR, are guaranteed at all times within the statutory time limits. Supplier indemnifies ams for any loss or damages, including, but not limited to, costs of breach notification, attorney's and other fees, fines and financial penalties under any applicable personal data protection laws.



## **27 Export Compliance**

- (i) For all items (software, technology, commodities) to be delivered and services to be provided, ams and Supplier shall comply with all applicable national and international export control, customs and foreign trade regulations ("Foreign Trade Regulations"). Supplier shall obtain all necessary export licenses.
- (ii) Supplier shall advise ams in writing as early as possible, but not later than two (2) weeks prior to the scheduled delivery date, and in case of changes without undue delay, of the following information and data:
  - All applicable export list numbers including Export Control Classification Number (ECCN) as per U.S. Commerce Control List;
  - The statistical commodity code according to the current commodity classification of the foreign trade statistics and the HS (Harmonized System) Code;
  - Country of origin (non-preferential origin). If the Deliverables do not have any origin characteristics, the annotation "No goods of origin" has to be included in the order confirmation and in the delivery invoice. In this case, ams has the right to cancel the order.

Upon request, Supplier shall provide further information and data required by ams to comply with all Foreign Trade Regulations for the items applicable in the countries of export and import as well as re-export in case of resale.
- (iii) ams shall not pay and shall not be obliged to fulfil the contract if such fulfilment is hindered by impediments arising out of Foreign Trade Regulations.

## **28 Assignment**

The Supplier shall not assign a PO or any claims thereunder without the prior written consent of ams. ams has the right to assign a PO at its discretion.

In case of change of control of the Supplier, the Supplier shall immediately inform ams of such change. ams reserves the right either to approve such change of ownership or to immediately cancel the PO without any further obligations and responsibilities. Confidential Information and any specifications, tooling and documents provided by ams to the Supplier in connection with the fulfilment of the PO has to be returned upon ams' request.

## **29 Limitation of Liability of ams**

In no event shall ams be liable to the Supplier or to any third party for any incidental, indirect, exemplary, special, punitive or consequential damages, loss of profit, goodwill, or production downtime, whether or not ams was advised of the same.

## **30 Security in Supply Chain**

The Supplier shall provide the necessary organizational instructions and take measures, particularly with regard to the following security: premises security, packaging and transport, business partner, personnel and information - in order to guarantee the security in the supply chain according to the requirements of respective internationally recognized initiatives based on the WCO SAFE Framework of Standards (e.g. AEO, C-TPAT). The Supplier shall protect the Deliverables provided to ams or provided to third parties designated by ams against unauthorized access and manipulation. The Supplier shall only deploy reliable personnel for those Deliverables and shall obligate any sub-suppliers to take equivalent security measures.

## **31 Accident Prevention / Environmental Protection Regulations etc.**

- (i) The Deliverables as well as the production processes for Deliverables must comply with applicable regulations, including those on the security of technical equipment and on dangerous chemicals, other relevant standards and other recognized practices and procedures. The regulations of any international associations specified in the PO must also be observed. The same applies to environmental protection regulations.
- (ii) Any necessary protective equipment shall be provided by the Supplier and shall be included in the price.

- (iii) For transportation of dangerous goods (chemicals, compounds or articles containing such substances), current versions of national and international dangerous goods regulations, e.g. ADR (road), IMDG-Code (sea) or IATA DGR (air) have to be applied. If the PO indicates that the Deliverables are to be forwarded, the Supplier shall also comply with all regulations required for additional modes of transport in respect of packaging and labelling.
- (iv) In the event ams orders substances or preparations thereof for which a material safety data sheet is required according to national or international regulations, the Supplier has to provide such sheet free of charge to the requesting department and in the standardized form applicable for the country of destination or hand it in on request.

### **32 Safety**

The Supplier shall fulfil all legal requirements on the restriction of use of certain hazardous substances in electrical and electronic equipment and on waste electrical and electronic equipment.

### **33 Force Majeure**

Neither Party will be liable for any delay in performance or non-performance of this Agreement caused by an external event, and such event is unforeseeable or which, being foreseeable, cannot be avoided even by exercising the utmost care ("Event of Force Majeure"), if the affected Party has notified the other Party of such circumstances immediately and uses reasonable efforts to correct its failure to perform. Without limiting the generality of the foregoing, an Event of Force Majeure may for example include natural disasters, rebellion, embargoes and epidemics. For purposes of these GPC, the following shall not be considered an Event of Force Majeure (i) delays in transportation, (ii) shortages of materials, (iii) delays attributable to Supplier's manufacturers or subcontractors or (iv) economic considerations or inefficiencies, unless such delays or shortages are caused by any natural disaster or other cause beyond such Party's reasonable control as aforesaid.

### **34 Audit**

ams may inspect the Supplier's manufacturing locations, warehouse and other facilities during normal business hours, by providing reasonable notice to the Supplier. The Supplier shall provide ams with its own inspection, quality and reliability data upon request.

### **35 Insurance**

Supplier shall maintain a general and product liability policy covering property damages, bodily injury or deaths as well as financial losses as arising out of any of the foregoing. This insurance policy shall at least provide a limit of five (5) million dollars (\$5,000,000) and shall be carried out with an insurer of adequate financial security (minimum rating: investment grade). Upon ams's request, Supplier will provide an insurance certificate evidencing the requested insurance coverage.

### **36 Discontinuation**

In the event the Supplier decides to discontinue the manufacturing of any Deliverables ("End of Life"), Supplier will inform ams in writing of its intention at the latest 24 months before the discontinuation becomes effective and will provide a last-time-order period of 24 months. Any PO issued prior to the end of such 24 months period shall be fulfilled without interruption. The prices may not be increased for the last time-order period.

In the event Supplier is otherwise unable to supply any or all of the Deliverables for whatever reason, Supplier agrees to take all actions necessary in order to ensure that there is no interruption in the supply of Deliverables to ams. Supplier agrees to take such actions as may be reasonably required by ams to accomplish the transition from Supplier to an alternative seller.

### **37 Cancellation, Termination**

For reason other than Supplier's default, ams may at its own discretion cancel a PO or any part of a PO with respect to any undelivered Deliverables by written notice by giving 14 (fourteen) days' notice.

In such case, the following provisions will apply: (a) upon cancellation, ams's obligation will be to pay only for the Deliverables delivered prior to cancellation and accepted by ams according to clauses 8 and 10 above, as well as any reasonable cancellation costs; all payment obligations related to cancellation are limited to 100% of the price of the PO (b) upon receipt of notice of the intended cancellation, the Supplier must cease manufacture and supply of Deliverables and stop all further work and do everything possible to mitigate any costs incurred upon such cancellation, including the possible return, re-use or re-purposing of any materials which Supplier may have purchased pursuant to the PO.

In case Supplier fails to perform or otherwise breaches its obligations under the PO, ams may terminate the PO. If said breach can be remedied, this right will not be executed until the expiry of an appropriate grace period granted to remedy it. Notwithstanding the foregoing, any right to immediate termination for material breach is not affected.

### **38 Entire agreement**

These GPC, the PO, together with all conditions, specifications, standards and other appendices attached to the PO, listed therein or referred to, constitutes the entire agreement and exclusive statement of terms between ams and the Supplier with respect to the purchase and sale of the Deliverables.

Any changes in, or amendments to these terms shall only become effective after having been agreed to in writing by ams.

### **39 Severability**

Each clause herein is severable and distinct from every other clause. Should any provision of this GPC be invalidated by law, the validity of the remaining provisions of these GPC shall remain unaffected. The Parties shall in this case replace the ineffective provision with such provision, which, while being enforceable, most closely reflects the original intent of these GPC.

No failure or delay by ams to exercise any right or remedy provided under the PO or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. Any third party who is not a Party to the PO shall have no right to enforce any of its terms.

### **40 Choice of Law and Jurisdiction**

These GPC are governed by and shall be interpreted under the laws of the State of New York excluding its conflict of laws provisions. The application of the U.N. Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

Any disputes arising out of this Agreement shall be heard exclusively in a California state or federal court of competent jurisdiction within California, and the parties agree to submit to the personal jurisdiction and venue of California state and federal courts. Each Party waives any right to a trial by jury in any action or claim relating to this Agreement. The parties may mutually elect to resolve any dispute through alternative dispute resolution.