



European Organisation  
for Astronomical  
Research in the  
Southern Hemisphere

Organisation Européenne  
pour des Recherches  
Astronomiques  
dans l'Hémisphère Austral

Europäische Organisation  
für astronomische  
Forschung in der  
südlichen Hemisphäre

# **General Conditions of ESO Contracts**

**Munich, December 2009**

# GENERAL CONDITIONS OF ESO CONTRACTS

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## **General Conditions of ESO Contracts**

### **I. GENERAL PROVISIONS**

#### **1. Scope**

The General Conditions shall apply to ESO contracts except when otherwise specified in the contract. The term "ESO contract" shall signify all contracts and orders placed by ESO. The term "supplies" shall be deemed to mean the subject of a contract, including all work and services connected therewith.

#### **2. Acceptance of the General Conditions**

The submission of any bid or tender and the signature of an ESO contract shall constitute acceptance of the General Conditions, except to the extent that they may be modified in the contract.

#### **3. Observance of Laws and Regulations**

The contractor and/or his representative shall be deemed to have complied with all relevant laws and regulations. The said contractor and/or his representative shall alone be liable in the event of their infringing the said laws and regulations.

### **II. CONTRACT DOCUMENTS - SIGNATURE -AUTHORIZED REPRESENTATIVES**

#### **4. Contract Documents**

4.1 Contracts let by ESO shall consist of the text of the contract, together with any annexes (specifications, plans, drawings, etc.), and the General Conditions.

4.2 In contractual matters, the following order of priority shall apply to the contract documents:

1. the text of the contract;
2. the invitation to tender and in particular the relevant specification;
3. the General Conditions;
4. the contractor's bid or tender.

A document higher on the priority list shall always take precedence over a document lower on the list.

#### **5. Signature of Contract**

5.1 A contract shall be deemed to be constituted only after it has been signed by the contractor and by one or two duly authorized representatives of ESO. The date of signature by ESO shall be the date of constitution of the contract. Agreements in writing only shall be binding. Failing such written agreement, either party may withdraw without incurring any liability, in particular of a financial nature.

5.2 All documents supplied as annexes to the contract by the contractor or by ESO shall be covered by an authenticated document dated and signed by duly authorized representatives.

5.3 All modifications of whatsoever kind to the contract shall take effect only after the signature of an amendment, as specified in paragraph 12.1.

## **6. Authorized Representatives**

Any person empowered to act as a representative of one or several contractors shall first be accredited to ESO by the said contractor or contractors. ESO reserves the right to verify the extent and validity of his powers.

## **III. PERFORMANCE OF CONTRACTS**

### **7. Contract Management - Representation**

- 7.1 The contractor shall be solely responsible for the performance of the contract in every respect, in accordance with the normal customs of the trade. He shall draw ESO's attention to any element which could impede a good performance of the contract, especially by giving at any time any suitable information for this purpose.
- 7.2 Every contractor shall be granted, on request, free access to the ESO site for all questions relating to the performance of a contract with the Organization. He shall be deemed, both for himself and on behalf of any of his sub-contractors, to be fully conversant with the conditions for the supply of materials and with the nature of any foreseeable special difficulties inherent in the performance of the contract. He shall therefore refrain from making any claims in respect of such matters, except in circumstances beyond the contractor's reasonable control.
- 7.3 One month after the signature of the contract at the latest, the contractor shall inform ESO in writing of the name of his accredited representative for the duration of the performance of the contract.

### **8. Assignment - Sub-contracts - Sub-orders**

- 8.1 The contractor shall request prior authorization from ESO in writing for the complete assignment or sub-letting of any ESO contract, even if the contractor joins or forms a company for the performance of the contract. ESO reserves the right to specify that prior authorization shall be sought in writing for the assignment or sub-letting of any important part of a contract. If ESO fails to reply to an application for such authorization within one month of receiving such an application, it shall be deemed to agree to the said application. In any event the contractor shall remain solely responsible to ESO for the performance of the contract and shall take all necessary steps to ensure that the remaining work is satisfactorily performed.
- 8.2 Where prior authorization is called for, the contractor may be required by ESO to provide a copy of any sub-contracts and/or sub-orders which he has placed, together with copies of any subsequent modifications thereto, except for their financial clauses.
- 8.3 The contractor shall be required to inform his sub-contractors of any clauses of the contract which might be applicable to their obligations.

### **9. Deliveries - Performance Schedule - Time Limits**

- 9.1 The supplies specified in the contract shall be delivered in compliance with the provisions of the contract, at the date and place and in the manner stipulated therein.
- 9.2 If the contract is to be performed by stages, the contractor shall send to ESO, within the time limit laid down in the contract, or, if no time limit is laid down, within one month from the date of signature of the latter, a time-table indicating the projected completion dates of the stages in the performance of the contract. In conformity with the periodic examinations made by the parties to the contract as it is being performed, the time-table shall be regularly kept up to date by the contractor after ESO's approval has been obtained. This time-table and the amendments thereto shall be drawn up solely for purposes of information and as an indication; the only time limits binding on the contractor shall be those specified in the contract. In the particular case of construction work, the contract will contain provisions for detailed schedules and time-tables with which the contractor shall strictly comply.
- 9.3 Where the performance of the contract is likely to be delayed by circumstances beyond the contractor's reasonable control and where the contractor can show that he has made every effort to limit the consequences of such delay, the contractual time limits shall be extended, provided that such extension does not necessarily lead to an alteration of the prices stipulated in the contract.

- 9.4 The contractor shall, within fifteen days of its coming to his notice, notify ESO by registered letter of any occurrence likely to delay the performance of the contract, failing which he shall be precluded from making any claim in this respect.

## **10. Information to be Provided**

- 10.1 The contractor shall supply ESO free of charge with all the documents, information and technical data which ESO may reasonably deem necessary for the performance of the contract.
- 10.2 In case of a contract relating to study, experiment, research and development the contractor shall supply ESO, free of charge, with all the information and technical data in documentary or other appropriate form generated under his contract giving full details concerning the work performed and the results achieved.
- 10.3 Failure to supply documents stipulated in the contract, by the dates and in the form prescribed, may entail the suspension of payments.
- 10.4 ESO's approval of a technical document shall in no way relieve the contractor of his responsibility for the proper performance of the contract.

## **11. Material Supplied by ESO**

- 11.1 The contractor shall be responsible for the safe keeping of all materials, parts, equipment and/or apparatus belonging to ESO which are entrusted to him for the performance of the contract. If such items have been purchased by the contractor for and on behalf of ESO, he shall take all necessary measures and, in particular, retain all documents required to prove ESO's ownership, including any ESO documents.
- 11.2 A contractor whose contract is cancelled for any reason whatsoever shall immediately return to ESO all property belonging to ESO, which property shall be deemed to include all copies of ESO documentation. ESO for its part shall return to the contractor everything which is his property.

## **12. Right to Modify and Power to Terminate the Contract**

- 12.1 Any modification to a contract shall be set out in an amendment, which shall be drawn up before the performance of such modification is begun.
- 12.2 In any contract, provided the stage reached in the performance of the contract so allows, ESO may call for any modifications that may appear to it desirable. No modification should entail a reduction in the extent of the technical guarantees which the contractor is committed to provide. The contractor shall therefore draw ESO's attention beforehand to any consequences for the guarantee which a modification may entail. Should ESO exercise the right of modification, an amendment to the contract shall be drawn up stating the technical modifications involved and their effect on the completion dates, price of the contract and on the guarantee.
- 12.3 Any claim which the contractor may have with respect to modifications made at ESO's request shall be submitted to ESO at the latest within thirty days following such request, failing which the contractor shall be precluded from making any such claim.
- 12.4 The contractor may propose to ESO modifications such as to improve the conditions of performance of the contract or the quality of the supplies. Should this proposal be accepted, such modifications and their implications shall be recorded in an amendment to the contract.
- 12.5 ESO may at any time, by registered letter, terminate any contract in whole or in part, with payment of full compensation to the contractor, the amount of which shall not exceed the value of the contract.

## **13. Inspection - Supervision**

- 13.1 ESO may carry out through a representative of its choice any reasonable supervision, check or inspection it may consider desirable, both on the contractor's premises and on those of sub-contractors and of holders of sub-orders. The exercise of this right shall in no way prejudice ESO's decision when taking delivery of or accepting any supplies and shall in no circumstances affect ESO's right in the matter of guarantees or lessen in any way the contractor's responsibilities regarding the due fulfilment of his obligations.

- 13.2 The contractor shall take all necessary measures to permit the accredited representatives of ESO, at any reasonable time, to make such checks or inspections that ESO may consider necessary. He shall also facilitate ESO's supervision over the performance of the contract. The above provisions shall equally apply to sub-contractors and/or recipients of sub-orders, who shall be notified thereof in good time by the contractor.
- 13.3 Representatives of ESO may carry out any verification needed to satisfy themselves of the proper technical performance of the contract, and may call for the suspension of any work they may judge unsatisfactory because it fails to comply either with the terms of the contract or with the normal customs of the trade.
- 13.4 ESO undertakes, on its own behalf and on that of its representatives, to observe normal commercial secrecy when exercising its rights of inspection and supervision, and to strive to reduce to a minimum any inconvenience which the exercise of these rights might cause to the contractor's activities.
- 13.5 Whenever so requested, the contractor shall, by the dates and in the form prescribed, supply ESO with all technical information and documents and all reports concerning the performance of the contract. Such reports shall be submitted solely for purposes of information, and acceptance by ESO of any such report shall in no way prejudice ESO's subsequent decisions regarding the performance of the contract, or affect any of ESO's rights, particularly in the matter of guarantees.

#### **14. Routing - Transport - Packing**

- 14.1 The costs relating to despatch, transport and routing of supplies and their unloading at the place specified in the contract shall be borne by the contractor who shall, throughout the entire duration of transport, including unloading at their destination, retain responsibility for the supplies which he is required to deliver under the terms of the contract.
- 14.2 ESO reserves the right to change at any reasonable time the place of delivery of the supplies, subject to adjustment of the prices specified in the contract.
- 14.3 Should ESO request the postponement of despatch of the whole or part of an item to be supplied, the contractor shall provide free storage and maintenance under his own responsibility for a period of two months dating from the stipulated date of delivery. If this period exceeds two months, the contractor's obligations shall continue, subject to agreement between the parties concerning payments to be made.
- 14.4 Packing required for transport and handling, including crates, cases and receptacles of any type, shall be supplied by the contractor and, with the exception of ISO freight containers, be regarded as non-returnable. The cost of such items shall be deemed to have been included in the contract price.

#### **15. Provisional Acceptance**

- 15.1 Provisional acceptance shall be granted after all supplies have been delivered and have satisfied the conditions of the contract, and provided that the contractor has fulfilled all his obligations for this purpose. A certificate of provisional acceptance may be drawn up jointly.
- 15.2 If the provisional acceptance has not been granted within three months of the date on which the contractor has notified that he has fulfilled all his obligations to this end, ESO, when the contractor so requests, shall effect payment and acquire property in the supplies, whilst reserving all rights in respect of the guarantee. The expiry date of the guarantee period shall be subject to negotiation taking into account the requirements of safe keeping of the supplies.
- 15.3 Property in the supplies shall pass to ESO on the date of provisional acceptance or on such other date as may be agreed between ESO and the contractor.

#### **16. Guarantee**

- 16.1 The guarantee period shall be two years for all supplies furnished by a contractor, provided however that the guarantee period for construction work is that usually applicable to such work. The guarantee period shall begin on the date of provisional acceptance.
- 16.2 The contractor shall carry out, at his own expense, all work, such as modifications, adjustments, settings and repairs, necessary to comply with the terms of the contract, or replace at his own expense all or any part of the supplies which turn out not to comply with these terms during the

guarantee period. If the contractor fails to comply with the above requirements, ESO may, after serving due notice on the contractor, take the necessary action in his stead and at his expense.

- 16.3 If supplies are rejected during the guarantee period, ESO shall decide, after receiving the contractor's proposals, whether such supplies shall be replaced free of charge by the contractor, whether their cost shall be reimbursed by him at replacement prices, or whether they shall be repaired or modified by him at his expense. For items replaced, the guarantee period shall recommence on the date of replacement. For items repaired or modified, the guarantee period shall be prolonged by a period equal to that during which they were unavailable.
- 16.4 All defective supplies will be held by ESO on the contractor's behalf, but at the contractor's risk, for a period of one month following ESO's notification thereof to the contractor in writing. Thereafter, such supplies shall be at the disposition of ESO without charge, to use as it thinks fit.
- 16.5 If, during the guarantee period, supplies become unusable for reasons ascribable to the contractor, in particular as a result of abnormal wear, breakage or defective functioning of one or more parts of the said supplies, the guarantee period for the whole of the supplies concerned shall be extended by all the periods during which the said supplies as a whole were unusable.
- 16.6 The contractor shall meet all costs arising in connection with his obligations under the guarantee, including those of transport. He shall not be responsible for costs resulting from deterioration attributable to ESO by reason of negligence, inadequate supervision or maintenance, or mishandling. Except as provided for in paragraph 16.2, the contractor shall not be held liable if components have been replaced, modified or repaired by ESO without the contractor's written consent.
- 16.7 Compensation for indirect damages may be demanded only in the event of gross negligence or misconduct of the contractor.
- 16.8 If the defect observed in the course of the guarantee period is found to be due to a technical error of a systematic nature, the contractor shall replace or modify at his expense all identical components covered by the contract which are liable to suffer from this error, even if these components are functioning correctly.

## **17. Final Acceptance**

- 17.1 Final acceptance shall be granted with effect from the expiry of the guarantee period, provided that the contractor has met all his obligations.
- 17.2 If the contractor makes a written request for final acceptance, ESO shall give its reply within fifteen days following such request. In every case, ESO may require a general examination to be made of the supplies and their history since provisional acceptance, and the findings to be recorded in a document signed by both parties, whereupon final acceptance shall be granted and, where appropriate, backdated to the date of the written request, if such a request was made.
- 17.3 In the event of rejection affecting only part of the supplies, final acceptance shall be granted for all supplies not rejected, in so far as they can be utilized independently of the rejected portion.
- 17.4 If, during the guarantee period, it is necessary to replace part of the supplies by reason of abnormal wear, breakage or defective functioning, the extension of the guarantee period relating to such part shall not preclude the granting by ESO of partial final acceptance.

## **IV. PRICES - PAYMENTS - FINANCIAL PROVISIONS**

### **18. Prices**

Unless otherwise stated, prices shall at all times be deemed to be firm and not subject to revision. Supplies for the use of ESO are exempt from customs duty. With regard to taxes and levies, there are special arrangements for ESO and the contractor is required to become conversant with such arrangements. Accordingly prices shall be quoted net and free of tax. Where VAT is applicable, these taxes shall be shown clearly on the invoice. Save in respect of possible exemption from VAT arising from the special fiscal conditions which apply to ESO, the contractor shall in no way be released from his obligation to pay any taxes which may normally be due.



## **19. Price Revisions**

Price revisions, if applicable, shall not be effective beyond the contractual time limits if the delay is due to the contractor. The indices used in the price revision formulae must be those of official government publications. Information from private sources shall be accepted only when such official sources are not available. The consequences of applying price revision formulae shall in any case be limited to the increase in prices which has effectively taken place.

## **20. Payments**

- 20.1 No payment shall be effected without receipt of an invoice drawn up in the form prescribed in the contract and accompanied by all relevant supporting documents.
- 20.2 Provided that the invoice has been accepted, payments shall be effected within thirty days following receipt of the invoice in the form and under the conditions laid down in the contract.
- 20.3 Final payment for supplies shall be made only after acceptance by ESO.

## **21. Miscellaneous Financial Provisions**

- 21.1 No advance shall be paid unless the contractor has obtained from a bank approved by ESO a joint and several banker's guarantee in ESO's favour for an amount equal to the sum demanded from ESO. Payment may be effected by instalments for each completed part of the contract.
- 21.2 Up to the final acceptance, ESO may withhold the payment of up to ten per cent of the contract price as security; this security may also be provided by a joint and several banker's guarantee for the same duration and amount.

## **V. SAFETY**

### **22. Contractor's Obligations**

In addition to observing all relevant national legislation in safety and health matters, the contractor shall, when on the ESO site, comply with the safety regulations in force thereon, with which he is required to become conversant. He shall take all necessary measures to this effect. These obligations shall be taken into account by the contractor when drawing up his tenders and performing the contract.

## **VI. INTELLECTUAL PROPERTY AND PATENT RIGHTS**

### **23. Intellectual Property**

- 23.1 No publication, communication or use of any piece of knowledge which is acquired from ESO in relation to an ESO contract and which is patentable or may be considered intellectual property shall be made without prior agreement in writing between the parties.

- 23.2a By accepting a purchase order or contract, the contractor agrees and accepts that ESO will have an irrevocable and unrestricted right, free of any charge, to use, copy and disseminate any information supplied by the contractor in satisfaction of the requirements of the contract, with due respect to the existence of any copyright therein.

ESO is entitled to transfer the data to universities and similar scientific institutes working in the same field as ESO in the Member States of the Organisation.

ESO and the above-mentioned institutes have the right, for their own requirements in the field of scientific research and its application to

- use the data in question free of charge,
- allow the data in question to be used, free of charge, by third parties for these purposes.

23.2b The same applies to information identified to be of a proprietary nature; such information shall, however, only be disseminated

- if required to achieve the purpose of the contract;
- if required for integration, testing, operation or maintenance of equipment studied or developed under the contract, also if performed by different contractors under separate ESO contracts;
- in order to exercise any reproduction right provided for in the contract.

When disseminating the data ESO will ensure that they are used only for its own purposes and that third parties do not disseminate them without securing written undertakings in advance that the data will be protected against any unauthorised use or further dissemination.

## **24. Use of Patents Belonging to Third Parties**

24.1 The contractor shall undertake to indemnify ESO and hold ESO harmless against any claim for infringement of intellectual property or patent rights, known and published in the contractor's country or registered by the European Patent Office at the date of signature of the contract, by the transfer or use of any equipment or component supplied by the contractor to ESO. He shall be liable for all the consequences, in particular legal and financial, of the exercise of its rights by ESO, and shall guarantee ESO against any claim, except if he has acted on formal instructions given by ESO.

24.2 The contract price shall be deemed to include any fees and royalties for the use of patent rights.

## **25. Right of Repair**

25.1 The contractor's patent and intellectual property rights shall in no way preclude ESO from repairing any equipment, or having it repaired by whoever it chooses, on expiry of the guarantee period, and from obtaining any parts for this purpose. Preference is nevertheless given to the contractor provided his prices and repair or delivery times are reasonable.

25.2 ESO shall notify third parties that they may use the information communicated to them only for the purpose of the repair. ESO shall communicate to third parties only such information as is necessary for the repair, and shall ensure that such information is used only for that purpose.

## **26. Developments**

The contractor shall, in accordance with conditions to be defined by mutual agreement, ensure that ESO is offered the possibility of application to the contract being performed of any development, whether patentable or not, which may arise during the performance of the ESO contract, even if the development has no connection with the said contract. He shall inform ESO of any such development.

## **27. Inventions - Patents**

27.1 A patent application by an ESO contractor in respect of an invention resulting from work performed or from documents, instructions or data obtained in any manner whatsoever as a result of a contract concluded with ESO shall be subject to prior agreement between ESO and the contractor, whereby the contractor shall, in particular, undertake to grant to ESO for the purpose of scientific research an irrevocable free licence, which ESO may make available to the suppliers engaged in work on its behalf. Such licence shall be freely transferable to universities and to similar scientific institutes working in the same field as ESO in the Member States of the Organisation. ESO shall not withhold its agreement unreasonably, and shall act with due diligence in notifying its decision. In these cases ESO shall inform the patent owner of this transfer.

27.2 If a patent is being taken out by a contractor, ESO shall observe normal secrecy until the patent has been officially granted.

## **28. ESO's Name and Emblem**

A contractor may not use ESO's name or emblem, or indicate that he is an ESO supplier, unless he has first obtained ESO's permission in writing.

## **VII. DELAYS – CANCELLATION**

### **29. Penalties for Delays**

- 29.1 If the contractor fails to observe the contractual time limits, prolonged if necessary in accordance with the General Conditions, he shall be liable to penalties, subject to the provisions of paragraphs 9.3 and 9.4. Prior warning by ESO shall not be necessary. The amounts of the penalties shall be set out in the contract.
- 29.2 As a general rule, penalties shall be calculated on the basis of the total amount of the contract.
- 29.3 Where the contract provides for delivery by stages, instalments or lots, and if the delay in delivery of such a stage, instalment or lot does not impede the general performance of the contract, the penalties shall be calculated on the basis of the value of each stage, instalment or lot.
- 29.4 Penalties shall be deducted from the payments due, without prejudice to ESO's right to claim the sum directly.
- 29.5 The enforcement of penalties shall not detract from ESO's right to cancel the contract for reasons of delay, such cancellation taking effect only after ESO has given the contractor formal notice by registered letter. In such cases, the penalties shall be applicable up to the latest time limit stipulated in the letter of notice.

### **30. Cancellation of Contracts**

- 30.1 In addition to the provisions made under paragraph 12.5, ESO may at any time cancel a contract in whole or in part by registered letter, without any compensation whatsoever, in the event of gross negligence or misconduct on the part of the contractor, and in particular in case of:
- failure to complete all or part of the contract, after receiving a formal letter of notice;
  - repeated or serious disregard of the disciplinary or safety regulations applicable on the ESO site;
  - corruption or attempted corruption of an ESO employee;
  - acts of fraud, misrepresentation and falsification concerning the quality, quantity or composition of supplies.
- 30.2 Cancellation by ESO in such cases shall automatically give ESO the right to obtain, at the expense of the contractor, all or part of the undelivered or rejected supplies from any supplier it may consider suitable. Notwithstanding the provisions made under paragraph 32.4, if, as a result of a new invitation to tender, the prices quoted are higher than those of the cancelled contract, the contractor shall, on request from ESO, pay to ESO the difference between the new and the old prices, without prejudice to the compensation that ESO may claim from him for non-completion of the contract.
- 30.3 Notwithstanding the provisions of paragraph 30.2, if the contractor can, in good faith, claim that he has been the victim of external and unavoidable circumstances preventing him from completing the contract and can provide proof that he has nevertheless taken all reasonable steps to fulfil his obligations under the contract, the parties may cooperate in seeking a way of terminating the contract equitably.

## **VIII. MISCELLANEOUS PROVISIONS**

### **31. Bankruptcy - Prosecution for Debt - Sequestration - Distraint - Liquidation**

- 31.1 Should a contractor become involved in bankruptcy proceedings, prosecution for debt, sequestration, distraint or liquidation of assets, ESO reserves the right to cancel the contract by registered letter without compensation and without prejudice to ESO's right to seek legal redress.
- 31.2 ESO has the same right of cancellation if a contractor makes a composition or other arrangement with his creditors or for their benefit, or effects a transfer of his property to their advantage or signs a fiduciary agreement in their favour.

### **32. Liability in Tort - Social Security - Contractual Liability - Insurance**

- 32.1 With regard to his liability in tort, the contractor shall be liable for all damages arising from his action or that of his agents, of which he or his agents could be rendered responsible under the applicable laws.
- 32.2 The contractor shall bear the full financial consequences of any material damage or personal injuries which, through his action, may be suffered by himself, his agents, ESO or its agents, or any third party during the performance of the contract, either on the ESO site or outside it.
- 32.3 The contractor shall at all times comply with the social legislation which applies to him and shall be solely liable for the consequences of any infringement.
- 32.4 In matters concerning the contract, the contractor's liability shall be restricted to the price of the contract.
- 32.5 The contractor shall take out insurance cover with companies of reputed solvency for third party liability risks connected with the contract.

## **IX. DISPUTES - STATUS - APPLICABLE LAW**

### **33. Arbitration**

Failing an amicable settlement of any dispute, the parties shall resort to arbitration under the following conditions:

Each party shall appoint an arbitrator within thirty days after notice has been given, by registered letter with acknowledgment of receipt, by either party to the other, of its intention to resort to arbitration. The two arbitrators shall, by joint agreement and within thirty days of the appointment of the second arbitrator, select a third arbitrator, who may in no case be drawn from amongst persons who are or have been in any way in the service of ESO or of the contractor, or of any subsidiary or affiliated company of the latter. The third arbitrator thus selected shall preside over the Arbitration Tribunal.

Should one of the parties fail to appoint an arbitrator and/or shall an appointed arbitrator be prevented for any reason from fulfilling his functions, a replacement shall be selected within a period of thirty days in accordance with the above procedure.

Should one of the parties fail to appoint an arbitrator and/or the two arbitrators fail to agree on the selection of a third, the choice shall be made by the President of the Court of Arbitration of the International Chamber of Commerce, at the request of the first party to do so.

The arbitration proceedings shall take place in Munich unless otherwise agreed by the parties.

The arbitrators shall be entitled to be assisted, in such manner as they see fit, by legal advisers, experts and other persons selected by them, to undertake investigations, to hear the parties either separately or in each other's presence, assisted if they so desire by legal advisers and/or experts, and generally to carry out any enquiries, investigations and hearings which may provide them with information for the performance of their task.

The parties shall spontaneously provide the arbitrators with such assistance as they are capable of providing.

The award shall be made within three months of the final appointment of the third arbitrator. This time limit may, however, be extended provided the parties agree.

The arbitrator's award shall faithfully interpret the terms of the contract. With regard to matters of procedure not dealt with in the contract, the award shall be based, by analogy, on the code of civil procedure of the Federal Republic of Germany.

The award shall be final and binding upon the parties, who shall in advance undertake not to resort to any form of appeal.

Nevertheless, either party to the dispute may, within fifteen days of announcement of the arbitrators' award, request them to provide a joint interpretation of their award. This interpretation shall be given within thirty days of the award.

During this time execution of the award shall be suspended.

The costs and fees of arbitration shall be determined and apportioned by the Arbitration Tribunal.

The arbitration clause set out in the present Article shall be applicable to all amendments, modifications and addenda to a contract, even if this clause is not specifically mentioned therein and provided that there is no formal provision to the contrary in such amendments, modifications or addenda.

#### **34. Status of ESO**

ESO is an Intergovernmental Organization set up by the Convention of 5 October 1962, and has its seat at Garching, Federal Republic of Germany. It is established on the territory of the Federal Republic of Germany. ESO enjoys international status as defined in the Protocol relating to privileges and immunities of the European Organisation for Astronomical Research in the Southern Hemisphere and the Status agreement between ESO and the host country. Special legal, customs and fiscal conditions therefore apply to ESO in the Federal Republic of Germany and the following states: Austria, Belgium, Czech Republic, Denmark, Finland, France, Italy, the Netherlands, Portugal, Spain, Sweden, Switzerland and United Kingdom. The contractor shall be deemed to be conversant with the effect of these special conditions and shall accordingly, in conjunction with the appropriate ESO services, make such arrangements as may be required.

#### **35. Applicable Law**

- 35.1 ESO contracts are subject to the regulations adopted by ESO by virtue of its international status and subsidiarily to German law.
- 35.2 ESO contracts shall be deemed to have been drawn up and to be performed in Munich.

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## General Conditions

### Governing Invitations to Tender and Tenders

#### 1. Invitations to Tender

- 1.1 As a general rule invitations to tender shall be issued only to manufacturers or contractors established in the territory of Member States. Invitations to tender are issued in the form of selective invitations. In establishing lists of firms to be approached, ESO may seek advice from the relevant authorities and professional associations of the Member States.

#### 2. Offers or Tenders

- 2.1 Every offer shall be dated and signed by the bidder or his duly authorized agent.
- 2.2 Above his signature the bidder shall insert a form of commitment showing without any possible ambiguity that he is expressing his intention to submit a bid. An offer shall commit the bidder for a period of one hundred and twenty calendar days from the closing date for the dispatch of bids, as specified in the invitation to tender. The bidder shall be debarred during that period from modifying the prices or conditions of the offer.
- 2.3 Bids in reply to an invitation to tender issued by ESO shall conform strictly to the forms prescribed therein. Any offer which has been altered or left incomplete may be rejected without further reason. Where the invitation to tender provides for several elements, headings or lots, the bidder shall submit a separate price for each. He may indicate what price reduction he would agree to if he were awarded the whole or part of the order. He may also specify that compliance with the prices quoted shall be subject to his receiving the whole or part of the order.
- 2.4 All clauses of the bid, and particularly those concerning the proposed prices, shall be clearly legible and any erasure or addition shall be confirmed and initialed by the bidder, failing which the bid or offer will not be taken into consideration.
- 2.5 ESO reserves the right to place orders for goods in the manner appropriate to its aims in each particular case and to award separate contracts for each element, heading or lot with such suppliers as it sees fit, even where the said supplier may not be the lowest bidder. ESO may also decide not to accept any offer. A bidder whose offer has not been accepted may in no circumstances either raise any objection or claim any compensation whatsoever.
- 2.6 If several bidders desire to submit a single joint or collective offer for all or part of a contract, they shall in their bid appoint a duly accredited agent to negotiate on their behalf with ESO and shall delegate to the said agent such authority that, in negotiating with him alone, ESO shall be deemed to negotiate collectively with all the bidders. Nevertheless, ESO shall retain all its rights in relation to each of the suppliers. ESO shall be entitled, before accepting such an offer, to require that the bidders be bound to ESO jointly and severally.
- 2.7 The submission of a tender shall be deemed to be an implicit acknowledgement by the bidder that he is in a position to fulfil every obligation, without exception, under the contract which may be concluded with him and that he is in possession of all the necessary information to that effect.

- 2.8 All offers or tenders shall be dispatched, at the latest, by the closing date stipulated in the invitation to tender. Accordingly all communications shall be sent by registered mail and by post only, the postmark providing the sole proof of the dispatch of the documents in due time. Any offer dispatched after the closing date stipulated in the invitation to tender may be rejected.
- 2.9 The documents of the invitation to tender shall give the names of the persons to be approached at ESO for technical and administrative questions, and the address to which offers are to be sent.

### **3. Prices**

- 3.1 Prices shall be quoted in EURO.
- 3.2 Unless otherwise stated, prices shall at all times be deemed to be net, firm and not subject to revision. Supplies for the use of ESO are exempt from customs duty. With regard to taxes and levies, there are special arrangements for ESO and the contractor is required to become conversant with such arrangements. Accordingly prices shall be quoted net and free of tax. Where value added tax (VAT) is applicable, this tax shall be shown clearly on the invoice. Save in respect of possible exemption from VAT arising from the special fiscal conditions which apply to ESO, the contractor shall in no way be released from his obligation to pay any taxes which may normally be due.
- 3.3 If ESO accepts price revision clauses, the conditions applicable to such clauses shall be laid down in special conditions of the invitation to tender.
- 3.4 The indices used in price revision formulae must be those of official governmental publications. Information from private sources shall be accepted only when data from such official sources are not available. The consequence of applying price revision formulae shall in any case be limited to the increase in prices which has effectively taken place.
- 3.5 The supplier shall bear the cost of insurance cover for loss and damages in respect of personnel, materials and goods in course of manufacture, construction and testing.

### **4. Late Delivery**

Every sale to ESO may be subject to a penalty for late delivery. The amount of this penalty shall vary in accordance with the value of the goods and shall be specified in the contract.

### **5. Applicable Law and Arbitration**

Any dispute between ESO and a bidder shall be settled by arbitration in accordance with the clause drawn up by ESO. ESO contracts are subject to the regulations adopted by ESO by virtue of its international status and subsidiarily to German law.