

## 1. GENERAL

- 1.1. These General Terms and Conditions (hereinafter, "GTC") and the purchase order document (hereinafter "PO") constitute the entire agreement (together "Agreement") between the ordering ESL entity as stated in the PO (hereinafter "ESL", "we", "us") and the supplier as defined in the PO (hereinafter "Supplier"), each a "Party", collectively also called "the Parties".
- 1.2. Any deviating, contrary, or supplemental General Terms and Conditions of the Supplier will become a contractual component only if we have expressly agreed to them in writing. This requirement for explicit consent by us applies in each case, even if we accept providing services without reservation while being aware of the existence of the Suppliers General Terms and Conditions.
- 1.3. Any correspondence regarding the GTC or the PO has to be directed to the ESL eProcurement team (mail to [eprocurement@eslgaming.com](mailto:eprocurement@eslgaming.com)) with reference to the PO number of the purchase order.
- 1.4. By entering into the Agreement, the Supplier confirms that it is contracting in exercise of his or its trade, business or profession.
- 1.5. The Agreement between ESL and the Supplier is concluded either:
  - if the Supplier received an authorized PO with a PO number in writing (per mail or email or
  - if the services have been rendered through the procurement system of ESL (Coupa supplier portal or the integrated shop functions).
- 1.6. The Supplier has the obligation to immediately technically check the ESL purchase request and is obliged to outline any deviations from the order in regard to it's quotation or enquiry documents without undue delay.

## 2. SCOPE OF SERVICES / SUPPLIER OBLIGATIONS

- 2.1. The scope of service and / or supply results from the items specified on the PO. Documents, reports, ideas, samples, and all other results from the provisions of the services are part of the contractual services.
- 2.2. The Supplier warrants that it delivers its services with utmost care and in consideration of the newest state of science and technology, all applicable safety regulations of public authorities and professional associations, and its own existing or during the rendering of the services obtained experience and results. It guarantees the compliance of all legal provisions, the agreed technical specifications, and any and all other applicable requirements.
- 2.3. During the Term of this Agreement, the Supplier shall provide the services as agreed upon herein. The Parties agree that Supplier may subcontract the services in whole or in part to its Affiliates (Affiliate means in relation to Supplier, a person or entity which directly or indirectly controls, is controlled by or is under direct or indirect common control of Supplier) or its subcontractors only upon prior written consent (email shall be sufficient) of ESL. In the event that Supplier subcontracts the services, Supplier shall remain fully liable for the performance of any of its Affiliates' and subcontractors' obligations and for any acts or omissions on their side which affects the performance of the services or which constitutes a breach of the Agreement or of applicable law and shall procure that the respective Affiliate or subcontractor complies with the terms of this Agreement.
- 2.4. The Parties agree that, in the absence of different provisions of the GTC or the PO, partial performance of the services constitutes a breach of the legitimate interest of ESL, therefore, ESL will have the right to refuse the acceptance of such partial performance, as well as to terminate the Agreement (in whole or in part). The Parties further agree that

ESL shall not be liable for costs or damages incurred by the Supplier in connection with the partial performance and the refusal to accept it.

- 2.5. The Supplier (no later than on the day of delivery or performance of services - unless agreed otherwise) will provide drawings (if applicable) and documentation of the services and/or goods as required by ESL. The Supplier is responsible for obtaining all necessary information prior to the delivery or performance of services.
- 2.6. The Supplier is obliged to comment in writing on the composition of the supplied goods without undue delay, if requested by ESL.
- 2.7. ESL shall be authorized to change the scope of services after the order has been submitted. The consequences of such a change request (e.g. additional or reduced costs, different delivery times, etc.) have to be mutually agreed to. ESL reserves the right to change their specified delivery site for any reasonable ground and the Supplier shall be responsible to deliver the materials and/or services to the new site. The transportation cost for delivery at the new site will be determined mutually by both Parties.
- 2.8. The Supplier is obliged to raise any concerns in regards to ESL's specifications for the delivery of the goods and/or services without undue delay. In this case the Supplier is obliged to suggest reasonable changes to comply with the agreed result or any legal requirements. Such changes require the express written approval of ESL.
- 2.9. Any materials to be provided by the Supplier for the purpose of being exploited by ESL (e.g. marks, logos, trailers or media content of any kind) must:
  - not be pornographic or liable to corrupt youth;
  - not endanger the democratic constitution or glorify violence;
  - not infringe laws or any third-party rights;
  - not adversely affect our reputation;
  - not contain advertisement or links to websites.
- 2.10. Supplier shall check and review all materials, products, works, documents and information provided by ESL related to or as part of its contractual services under the Service Agreement (including, without limitation media content, stage plots and designs, work orders, time schedules, tournament plans, content lists etc., "Service Materials") upon delivery or completion of these or upon ESL's reasonable request and provide ESL with a written report in case any improvements of these Service Materials are required in order to ensure ESL's contractual services without undue delay, but no later than within three (3) working days. The Supplier is obliged to immediately review the Service Materials received and provide ESL with written information in the event of any defects noticed or when changes are necessary for the proper performance of the PO. Lack of such information within three (3) working days from the date of receipt of the Service Materials will be tantamount to acceptance of those Materials and acknowledging that they are fully fit for the proper performance of the PO.
- 2.11. Due to security aspects at any ESL Event (all events with respect to ESL products including, but not limited to, leagues, tournaments and competitions owned and operated by ESL), the Supplier is obliged to report all supplier staff that is needed to provide the purchased services or goods. Upon request of ESL a clearance certificate of these staff members needs to be presented at the Supplier's own costs. All Supplier staff members may be searched upon entrance and leaving the production facilities by an authorized security person. Supplier staff members must wear their badge visible at all times and are only permitted to enter sections according to the clearance level on their badge. Guiding others is prohibited. During setup, rehearsal and teardown Supplier staff members must not take any pictures or films from the production site. Any violation may, in ESLs sole discretion, result in immediate confiscation of the camera/ smartphone and the staff member will be expelled from the production site. Any consequence of the expelling has to be borne by the Supplier.

- 2.12. Staff members of the Supplier that need to provide services or deliver goods during an ESL Event are not entitled to any catering meals provided by ESL and must wear neutral and discrete working clothes.
- 2.13. All of Suppliers obligations under this Agreement shall also directly apply for any and all Affiliates or subcontractors that Supplier engages for the provision of its contractual obligations.
- 2.14. If the supplied Goods or Services are defective or otherwise not in accordance with the requirements of the Agreement or PO, ESL will notify the Supplier of the above and may, without prejudice to other rights or remedies available to her under the Agreement or in accordance with applicable law, at its discretion: (a) require the Supplier to fulfill a contractual obligation; (b) request the delivery of replacement for supplied Goods, which will be free from any defects; (c) require the Supplier to remedy the non-compliance by repairing it; (d) withdraw from the Agreement or its part within seven (7) days from the disclosure of the defect or other case of non-compliance of a given Good, a given Service; or (e) reduce the price in proportion to the value of the Goods or Services already delivered or performed, even if doing so will result in a full refund of the price paid to the Supplier. The Supplier shall bear all costs of repairing, replacing and transporting non-conforming Goods or Services and will return all costs and expenses (including but not limited to inspection, handling and storage costs) reasonably incurred by ESL in connection with the above.

### 3. PAYMENT TERMS

- 3.1. The prices defined in the PO are fixed. Already included in the price are in particular shipping free to the door, insurances, tariffs, packaging, and material checks or any other surcharges such as overtime. Claims regarding extended costs due to any of the above or any other reasons need to be agreed to in a separate PO prior to the supply. Additional claims above the pricing specified in the PO will not be accepted by ESL. Any license fees shall be included in the price.
- 3.2. The delivery address is specified on the PO. The Supplier has to insure at its own expense potential damages from transportation, theft or wrong loading and/or unloading. All goods have to be packed in a manner that damages from transport and loading/unloading will be avoided. The Supplier is responsible for the compliance with any and all applicable regulations for shipping and shipping material.
- 3.3. Presentations, negotiations, preparation for pitches or detailed quotations will not be reimbursed if not specified in the order or a dedicated purchase order for such services has been submitted.
- 3.4. Only invoices can be processed that are compliant with the applicable tax regulations and that have a valid purchase order number as a reference. Any damages or consequences that result from the non-compliance of this obligation is the sole responsibility of the Supplier. The Supplier is not entitled to raise any claim against ESL in this case.
- 3.5. Each payment shall be due thirty (30) business days starting from the day the invoice has been registered and accepted in the ESL invoice system. Other payment terms only apply, if they are agreed to on the submitted purchase order.  
All payments will be wired to the bank account specified by the Supplier. If partial deliveries have been agreed to, the payment will be executed after all services or goods have been received in full.
- 3.6. Any and all payments shall be made in the currency stated in the respective PO. All amounts due shall be paid net, without any deduction of any kind, whether due to taxes or any other reasons, which are the sole responsibility of the Supplier. Value-added tax (VAT), if applicable, must be added to the fee by Supplier. Where taxes are withheld, the Parties are obliged to fully support each other in their efforts to recoup the withheld

taxes from the German or foreign tax authorities by, for instance, providing the other Party with the proper tax certificates. Upon request by ESL, Supplier will present ESL immediately with (i) any tax assessment dealing with the payment hereunder, (ii) any other sufficient official confirmation of the amount of taxes paid in respect to the payments and/or (iii) receipt(s) of the payment of the respective taxes. For the avoidance of doubt, the Supplier shall indemnify and hold harmless ESL from any and all costs in form of fees, translation costs and/or administrative costs occurring in connection with any support given and with the provision of certificates and other documents mentioned above by ESL.

- 3.7. Offsets and the right of retention are applicable for ESL within the statutory limits. Offsets and the right of retention for the Supplier apply only, if they are indisputable claims or legally binding. ESL is entitled to decrease the invoiced amount by the value of the goods returned or to compensate disbursements or damage claims.

#### 4. DELIVERY DATE

- 4.1. The delivery date on the purchase order has to be carefully checked from the Supplier and is binding. The delivery date shall be defined as the day of the goods received at the specified shipping address. ESL reserves the right to refuse the delivery of the goods if they are delivered prior or after the specified delivery date and to return them to the Supplier at its own costs. Alternatively, ESL reserves the right to store early deliveries. If for such storage costs third party costs occur, ESL can deduct those costs from the final invoice.
- 4.2. The Supplier is obliged to inform ESL in writing without undue delay, if he has noticed that the specified delivery date can not be held. If the supplier fails to give note to ESL, he can not refer to these circumstances.
- 4.3. In case of a culpable delay in delivery, ESL is entitled to a penalty of 0.2% of the total delivery value per delayed day. ESL can deduct this penalty from the invoice up to a maximum of 10% of the total amount.
- 4.4. In any case, ESL has the right of assertion of legal claims. The acceptance of a late delivery is not a waiver of compensation claims.
- 4.5. In addition to Section 4.3, ESL is entitled to render the services at an alternative supplier and to cancel the original order. In this case ESL is entitled to claim the surplus costs that occur due to the late delivery directly from the Supplier.

#### 5. TRANSFER OF RISK

- 5.1. The transfer of risk follows the successful delivery to an ESL employee or ESL authorized third party at the specified delivery address. Delivery includes the unloading at the determined delivery site.
- 5.2. The Supplier is obliged to submit the PO number on any document (delivery note, invoices, etc.) linked to the order. If the Supplier fails to fulfil this obligation, ESL shall not be held responsible for any delay in the processing of the documents.
- 5.3. Documents, reports, ideas, drafts, models, samples, etc. ("ESL Materials") that have been handed over to the Supplier remain property of ESL. Upon completion of the order, the Supplier shall return any and all ESL Materials to ESL without undue delay and without any further request from ESL. All provided ESL Materials may only be used for the purpose of the execution and completion of the order.

#### 6. WARRANTIES BY SUPPLIER

- 6.1. Supplier warrants, represents and undertakes vis-à-vis ESL that
  - 6.1.1. it has not entered into and will not enter into any agreement with any third party inconsistent with the provisions of this Agreement;

- 6.1.2. it is a company validly formed and it has been in continuous existence since its formation;
  - 6.1.3. it has and shall have the full right, title and authority to enter into this Agreement and to accept and perform the obligations, undertakings, covenants, warranties, representations and agreements as stipulated to be performed by Supplier pursuant to this Agreement;
  - 6.1.4. this Agreement has been duly authorized by the board of directors of Supplier and no other corporate action is, or will at any time be, necessary to authorize the signature of, and entry into, this Agreement or the performance of any action contemplated by this Agreement;
  - 6.1.5. as at the date of conclusion of this Agreement, there is no applicable law in force which prevents or imposes any restriction on Supplier in complying with its obligations under this Agreement, and, to the best of Supplier's knowledge and belief after Supplier having made all due and proper enquiries, no such restriction is due to come into force during the contractual term; and
  - 6.1.6. it complies with all relevant legal provisions, and, insofar as it is utilizing third parties for the provision of cooperation services, it ensures their compliance with such provisions and regulations;
  - 6.1.7. all information and materials provided by Supplier are true, accurate and not misleading in any respect.
- 6.2. Supplier represents and warrants (i) to neither challenge any rights granted, nor (ii) to induce or to support any challenges by third parties. In addition, Supplier represents and undertakes not to have copyrights, trademark rights (including all types of brands, domain names, icons and symbols) and/or any other type of intellectual property rights registered or protected, neither by itself nor by third parties, that could possibly impair (i) the rights granted or any other right granted to Supplier under the Agreement. Supplier shall undertake to inform ESL without undue delay in writing of infringements of such rights and/or preparations or contemplations by third parties to commit such acts of infringements.
- 6.3. Supplier shall indemnify and hold harmless and keep indemnified ESL as well as ESL's officers, employers and agents against any claims, actions, damages, expenses, other losses and/or costs incurred due to a culpable breach of the Agreement including (but not limited to) a breach of Supplier's warranties set forth in this Section 6 by Supplier upon first request. Supplier shall furthermore assist ESL comprehensively in any and all legal defence(s) and bear the costs incurred thereof.

## 7. TRANSFERABILITY OF RIGHTS AND OBLIGATIONS

- 7.1. ESL shall be entitled to assign, sub-license, sub-contract, pledge or otherwise transfer the Agreement and/or the rights and/or obligations arising herefrom in part or as a whole without Supplier's consent to any affiliated company of ESL (Affiliate means in relation to ESL, a person or entity which directly or indirectly controls, is controlled by or is under direct or indirect common control of ESL). Any further assigning, sublicensing, sub-contracting, pledging or otherwise transferring by ESL is subject to Supplier's prior written consent, which shall not be unreasonably withheld.
- 7.2. Any assigning, sub-licensing, sub-contracting, pledging or otherwise transferring by Supplier of the rights granted and/or any of its other rights and/or obligations under the Agreement completely or partially, to third parties, is subject to the prior written approval by ESL.

## 8. TERM AND TERMINATION

- 8.1. This Agreement becomes effective as specified in Section 1.5 and, unless otherwise agreed upon, shall remain in force until the earlier of (i) the completion of any and all Services by Supplier upon the latest delivery date stated on the respective PO (ii) for

recurring services with the delivery date of the last agreed upon and fully rendered delivery (iii) either Party terminates this Agreement according to the provisions of this Section 8 (the "Term").

8.2. Unless otherwise agreed upon in writing, either Party' right to ordinary termination of the Agreement shall be excluded. This shall not affect either Party's right to terminate the Agreement for good cause.

A good cause for either Party shall include

- the other Party (i) entering into liquidation whether voluntarily or compulsory, or having a receiver or administrator appointed over all or a substantial part of its assets, or at any time prior to the expiry of this Agreement ceasing to carry on business for whatever reasons and (ii) being in breach of any material term of this Agreement;
- the other Party breaching any material term of this Agreement and, if the breach is capable of being remedied, failing to remedy such breach within a period of fourteen (14) calendar days following the receipt of a written notice from the other Party requiring such breach to be remedied; or
- a legal measure comes into effect declaring the Agreement in whole or in essential parts to be void, invalid or illegal.

8.3. Any notice of termination must be made in writing (email shall not be sufficient).

8.4. ESL shall be entitled to terminate the Agreement with immediate effect, in the event that the Supplier, an employee or an affiliate or subcontractor of the Supplier (i) is in violation of any applicable anti-bribery or anti-corruption laws or (ii) promises, offers, grants, promises any benefits (including, but not limited to monetary benefits or benefits in kind) to ESL employees or ESL authorized third parties who are dealing with the preparation, execution, completion or are otherwise connected to the execution of the order.

8.5. The termination or expiry of this Agreement shall not affect any rights or obligations of either Party which have accrued prior to such termination or expiry.

8.6. For the avoidance of doubt, termination of this Agreement will have no effect on the obligation of the Supplier to perform services already agreed upon and paid for by ESL. For such services, the stipulations of this Agreement shall continue to be valid until all such services have been successfully and fully completed.

## 9. LIABILITY AND INSURANCE

9.1. Each Party shall be liable for the full extent of damage in the event of intentional behavior or gross negligence by the Party itself or its vicarious agents. In addition, each Party shall be fully liable in the case of non-observance of guarantees, in the case of culpable injury to life, body and health and under the statutory provisions on product liability.

9.2. The Supplier shall indemnify and hold ESL, its Affiliates and their respective officers, directors, members and employees (the "Indemnified Parties") harmless from and against any and all losses, claims, demands, liabilities, costs and expenses of whatever nature or kind suffered by or brought against ESL and any ESL Affiliate in connection with this Agreement. Each Party's liability for unforeseeable, untypical and indirect damages as well as for loss of profits is excluded.

9.3. The Parties undertake in the event of damage occurring or having already occurred to notify the other Party in writing and make all necessary efforts or to arrange for such efforts to be made without undue delay in order to limit the damage and its effects to a minimum.

9.4. The Supplier shall, at its own cost and at all times during the Term of this Agreement, take out and maintain all necessary and appropriate insurances with a reputable insurance company, covering all usual public and private risks associated with the business of the Supplier and in relation to the provision of the services including in

respect of damage caused by the Supplier and/or the Supplier Personnel to ESL, ESL Affiliates, third parties and their respective property.

- 9.5. In no event shall ESL be liable to Supplier for economical, incidental, or consequential damages, lost profits, lost business, loss production, lost savings, the cost of purchasing or licensing substitute products, business interruption, or special, punitive, or exemplary damages, whether claimed under contract, tort, or any other legal theory, even if Supplier has been advised of the possibility of such damages.

## 10. INTELLECTUAL PROPERTY RIGHTS

- 10.1. In general, ESL grants rights and/or interests with respect of its trademarks, service marks, designs, logos, copyrights, databases, know how, trade secrets and confidential information ("IPR") only if and to the extent explicitly agreed upon in writing between the Parties in a separate Agreement. Therefore, unless explicitly agreed upon otherwise in writing, ESL shall own and retain any and all IPR originally owned by ESL or arising from or related to ESL's contractual services under the Service Agreement. Supplier shall refrain from all and any acts and conduct that could conflict with ESL's unconditional ownership of its IPR.
- 10.2. All property rights (media, social media, web platforms, etc.) will remain with ESL. Upon prior written request of Supplier, ESL will provide those rights to the Supplier for internal use only. Any commercial use of ESL owned property rights is prohibited. A special license agreement can be entered into if the Supplier wishes to use them for commercial purposes.

## 11. CONFIDENTIALITY AND ANNOUNCEMENTS

- 11.1. Unless required by law, Supplier shall not make any public announcement regarding the Agreement without the prior written consent of ESL. Supplier shall notify ESL in writing at least seven (7) calendar days prior to the release of such announcement and provide ESL with the wording of the proposed announcement and take any requests or recommendations of ESL into due consideration when drafting the announcement.
- 11.2. The Party receiving confidential information ("Receiving Party") of the Party disclosing confidential information to the other Party ("Disclosing Party") shall treat all confidential information of the Disclosing Party as strictly confidential, and shall refrain from disclosing it to any third parties, unless
- 11.2.1. such confidential information has been legally obtained from a third party who is not restricted from disclosing such confidential information by law or regulation or, to the Receiving Party's best knowledge, by contractual obligations;
  - 11.2.2. such confidential information has been independently developed by the Receiving Party without use or benefit of any of the confidential information of the Disclosing Party;
  - 11.2.3. such confidential information is within the public domain, or later becomes part of the public domain without a breach by either Party of its obligations under this Section 11;
  - 11.2.4. agreed in writing between the Parties; or
  - 11.2.5. the disclosure is required by law.
- 11.3. A Receiving Party may disclose confidential information to its affiliates and/or its affiliates' officers and employees, brokers, lenders, insurers, vicarious agents and/or professional advisors who are bound in writing by the confidentiality obligations hereunder as far as legally valid under the applicable law, if there is also legitimate interest for such disclosure.
- 11.4. The obligations of the Parties under Section 11.2. shall remain unaffected by the contractual term and shall remain in full force for two (2) years after the expiration of the contractual term.

## 12. GOVERNING LAW AND JURISDICTION

- 12.1. The entire Agreement (including these GTC) shall be governed exclusively by and construed in accordance with the laws of the country of the ordering ESL entity as stated on the respective PO, excluding the United Nations Convention on the International Sale of Goods and all provisions regarding conflict of laws.
- 12.2. In the event that disputes arise out of or in connection with the Agreement or its validity the following shall apply:
- 12.2.1. ESL as complainant has the right to elect whether
- the disputes shall be resolved by the regional court of the registered office of the ordering entity as stated on the PO;
  - ESL may file a claim at Supplier's headquarter; or
  - the disputes shall be finally settled by a court of arbitration without recourse to the ordinary courts of law as follows: All disputes shall be finally settled in accordance with the arbitration rules of the competent institution of arbitration, located in the country of the ordering ESL entity at the time of receipt of the arbitration claim by such institution of arbitration without recourse to the ordinary courts of law. Upon request an incoming arbitral award can be declared enforceable by a national court. The place of arbitration shall be the seat of the respective institution of arbitration. An appeal against the arbitral award is not possible. The arbitral award shall also decide on the costs of the proceedings including the costs of the arbitrators. The arbitral tribunal consists of three arbitrators. The substantive law of the ordering ESL entity as stated on the respective PO is applicable to the dispute. The Parties agree that the regional court of the ordering ESL entity remains responsible for measures of interim protection.
- 12.2.2. The language of the arbitral proceedings is English.
- 12.2.3. Supplier as complainant shall only be entitled to file claims at the regional court of the registered office of the ordering ESL entity as stated on the PO, unless the Parties agree in writing that the disputes shall be finally settled by a court of arbitration without recourse to the ordinary courts of law.

## 13. ANTI-BRIBERY AND CORRUPTION DECLARATION

- 13.1. ESL and Supplier condemn corruption in all its forms. Accordingly, the Parties have conducted themselves at all times during the contractual term in accordance with the laws and to the highest ethical and moral standards.
- 13.2. Each Party hereby agrees and undertakes that, in performing any of its responsibilities under the Agreement or in connection with any other business transactions involving the other Party, it or its respective officers, directors, employees, agents or third parties acting on its behalf will comply with and will not violate applicable anti-corruption laws or international anti-corruption standards. Each Party shall undertake not to pay, offer or promise to pay, or authorize the payment of any money or other advantage of value to, or receive from any individual, in order to obtain, retain or direct business or to secure any other improper advantage in the conduct of business or transaction with the other Party.
- 13.3. Each Party shall immediately notify the other Party as soon as it becomes aware of a breach or possible breach of any of the requirements above. Supplier undertakes to ESL that it shall procure that its Affiliates or any of Suppliers subcontractors shall, during the Term, comply with any and all applicable Anti-Corruption/Anti-Bribery Laws.

## 14. DATA PROTECTION

Where a Party of the Agreement receives any personal data from the other Party, it shall ensure that it fully complies with the provisions of all applicable Data Protection laws and only deals with the data to fulfil its obligations under the contract. Each Party shall indemnify

the other Party for any breach of Data Protection laws which renders the latter liable for any costs, claims or expenses. Where required by law, the Parties will enter into a separate Data Processing Agreement.

#### 15. FORCE MAJEURE

Should either Party be prevented or delayed from performing its obligations under this Agreement because of an event such as war, serious flood, fire, typhoon, storm, and earthquake, epidemic, pandemic and serious diseases (WHO threat assessment "very high"), compliance with any law or governmental order, rule, regulation or direction or an act of God, other events beyond reasonable control of the Parties or in other cases which can be recognized by both Parties according to the international practice as a force majeure event (each a "Force Majeure Event"), neither Party will be liable to the other for any failure to fulfil obligations caused by circumstances beyond its reasonable control. In the event of such Force Majeure Event, the Parties shall discuss in good faith about schedule adjustments or other alternative measures to solve the Force Majeure Event. In case those have not been feasible, the Parties shall reasonably agree upon the mutual release of their contractual obligations regarding the events affected by the Force Majeure Event.

The invoicing Party shall prove that it has used commercially reasonable efforts to mitigate the effects of such Force Majeure Event on the performance of its contractual obligations. Such Party shall give written notice to the other Party without undue delay regarding the measures taken to mitigate such effects and shall inform the other Party of the period in which it is estimated that such failure or delay will continue.

Where the effect of the impediment or event invoked is temporary, the consequences set out above shall apply only insofar, to the extent that and as long as the impediment or the listed event invoked impedes performance by the Party invoking this Clause of its contractual obligations. Upon termination of the Force Majeure Event, the performance of any suspended obligation or duty shall without delay recommence.

#### 16. MISCELLANEOUS

- 16.1. The Parties commit themselves to each other for mutual respect, good behavior and loyalty. Each Party shall take the legitimate interests of the other Party into consideration.
- 16.2. Time references in the Agreement shall be references to the time zone of the respective shipping address.
- 16.3. Where the Agreement (including these GTC) requires written form, fax or email with scanned PDF attachment shall be sufficient, a mere e-mail (text form) shall not be sufficient, unless a different intention of the Parties is to be assumed.
- 16.4. Each Party shall bear its own costs and expenditures incurred with regard to the execution of the Agreement and for the fulfilment of its contractual obligations, unless otherwise explicitly stated.
- 16.5. Without prior written ESL consent, the Supplier shall not assert any rights of retention or setoff, unless the counterclaims are undisputed or have become res judicata.
- 16.6. If any provision of the Agreement is or shall become invalid/void or unenforceable in whole or in part, this shall not affect the validity of the remaining provisions of the Agreement unless the implementation of the Agreement, also in consideration of the following provisions, would present an unreasonable hardship for one or both Parties. This shall also apply if, after the Agreement is concluded, it is found to contain a loophole that requires filling. The Parties shall replace any invalid/void/unenforceable provision or loophole that requires filling by a valid provision that corresponds in its legal and economic content to the invalid/void/unenforceable provision or loophole.

- 16.7. The Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof, and replaces and supersedes any memorandum of understanding, term sheet, short form agreement, discussions or similar between the Parties, previously closed on the subject matter. All representations, conditions and warranties, verbal or written, express or implied, other than those contained herein, or in a notice of amendment issued hereunder, are expressly excluded.
- 16.8. Provisions to the contrary or terms or declarations by Supplier that deviate from the provisions stated in this Agreement do not apply. This also applies if such terms or declarations by Supplier were expressly pointed out to ESL.
- 16.9. Failure by ESL to exercise any right or entitlement that ESL is entitled to under the Agreement, or to pursue its claim, does not constitute a waiver of that right, entitlement or claim, or a waiver of any other right, entitlement or claim.
- 16.10. Unless otherwise agreed herein, no options of any sort are granted to Supplier under the Agreement, e.g. a matching right, a right for first negotiation or a right for first or last refusal.
- 16.11. Through the Agreement a joint venture between the Parties shall not be concluded.