General Conditions of PLATH GmbH for Procurement – Issued January 2018

§1 General Provision

1.1   The contractual relationship between the Supplier and PLATH shall be based on the Procurement Order, the Supplier's Order Confirmation and on these General Conditions.

1.2   These General Conditions set forth the main terms and conditions for delivery and supply by the Supplier to PLATH, and the rights and obligations of the Supplier under the Procurement Order. If the following clauses are in conflict with the terms set out in the Procurement Order, the latter prevails.

1.3   Supplier's conditions of delivery and other terms of contract of the Supplier, as well as any amendments or supplements to the Procurement Order, shall not become part of the contract unless PLATH agrees in writing.

§ 2 Definitions

Defect/Defects: The good or service shows a defect if upon the passing of the risk, it does not meet the agreed quality. To the extent that the quality has not been agreed, the good or service is defective if

1. it is not suitable for the use intended under the contract or

2. it is not suitable for the customary use and its quality is not usual in goods or services of the same kind and a reasonable buyer may expect a superior quality in view of the type of the good or service.

Quality includes characteristics which the reasonable buyer can expect from public statements on specific characteristics of the good or service that are made by the seller, the producer or his assistant.

The defects are to be classified under the following categories:

Category 1:

The use of the product in accordance with its purpose is not assured anymore because of the defect or persons, objects or data are endangered.

Category 2:

The defect severely constrains the execution of one or several fundamental specified functions. The product can only be used with substantial restrictions. This includes also clear performance problems. There is no workaround.

Category 3:

The defect severely constrains the execution of one or several fundamental specified functions. The product can be used with restrictions. This includes also clear performance problems. However, there is a workaround.

Category 4:

The defect causes inconveniences, but does not impede the execution of fundamental specified functions.

Category 5:

All other defects.

Delivery: deliveries of goods and/or services provided by the Supplier under the Procurement Order

Place of performance: Any given site, where the Delivery will be implemented, respectively has been implemented as defined in the Incoterms of the Procurement Order.

§ 3 Delivery Conditions

3.1   The Delivery shall be in accordance with the agreed specifications free of defects. The Delivery shall comply with the state of the art, the applicable statutory provisions, and the relevant regulations and directives of authorities, trade associations and professional associations.

3.2   As soon as the Supplier is able to realize that it will not meet a date or period, it shall inform PLATH without undue delay in writing of the period of the delay, indicating the reasons for the delay and the planned corrective measures. The assertion of any rights due to the delay by PLATH shall remain unaffected.

3.3   Title to the respective delivery shall pass to PLATH upon delivery at the place of performance.

3.4   The Delivery realization to be performed by the Supplier is subject to an acceptance at any place of performance.

3.5   If the Supplier is in culpable delay of any good or service subject to the scope of delivery, PLATH is entitled to claim a penalty amounting to 0,5% of the value of the good or service in delay, per week, whereas such claims are capped at 5% of the total value of the Procurement Order.

3.6   Consequences of delay

The Supplier will be in arrears if the delivery date is exceeded, even without warning by PLATH. PLATH is entitled to all legal claims for delay. In particular, PLATH is entitled to assert damage caused by delay and to withdraw from the order, either immediately after expiration of an unused expiration deadline for fixed dates even without further period of grace or immediately upon expiry of the delivery date. The Supplier shall reimburse PLATH for any damage caused to PLATH by late delivery. This includes, but is not limited to, the damages and damage risks and consequential damages of the delivery delay, regardless of the amount, which may exceed the purchase price by a multiple.

§ 4 Liability for defects

4.1   The acceptance is considered as failed, if the Delivery shows major defects (Category 1-3). The acceptance shall be repeated in its entirety after rectification of these defects by the Supplier. Take over and usage of the Delivery does not imply acceptance.

However, in the event that the Delivery presents only minor Defects (Category 4-5), then, subject to the prior consent of PLATH, the iteration of the acceptance may be limited to the defective functions and within the warranty period.

4.2   In the event PLATH refuses part or the totality of the Delivery in the course of the acceptance, the Supplier shall do its best effort to fulfil the Procurement Order. The Supplier shall present PLATH without undue delay a written report detailing the revised time schedule. Any and all costs resulting out of the acceptance refusal due to a Delivery Defect and the rectification of the relevant Defects shall be borne by the Supplier.

§ 5 Warranty

5.1   The warranty period commences with delivery or, if the scope of the Delivery comprises elements of a contract for work and labor or if acceptance of the Delivery is contractually agreed, with acceptance. The period has a duration of 24 months.

5.2   In case the Delivery shows a defect during the warranty period, the Supplier shall – subject to the choice of PLATH and free of additional charge – either rectify the defect or replace defective features of the Delivery by non-defective features, if not agreed otherwise in the Procurement Order. The aforementioned shall apply, without limitation, to software.

5.3   The rights as set forth in sec. 5.2 shall be asserted by PLATH by notifying the Supplier within two weeks after PLATH becomes aware of a Defect.

5.4   In the event of a major Defect occurring during the warranty period, especially, without limitation, concerning software, the Supplier shall carry out a Corrective Performance without undue delay upon the notification in accordance with sec. 5.3. If the Supplier, after having received a notification in accordance with sec. 5.3, does not initiate a Corrective Performance within a reasonable period of time set by PLATH, or if the Supplier does not do its best effort in carrying out a Corrective Performance successfully PLATH shall be entitled to carry out the Supplementary Performance, either themselves, or through a third party, at the expense of the Supplier, and shall be entitled to an advance payment of 30% of the estimated additional costs occurred.

5.5   The periods of time as set forth in sec. 5.1 and sec. 5.3 shall be extended accordingly to the additional delay necessary for PLATH to deploy the Delivery as a result of a Delivery Defect. In the event that parts of the Delivery are exchanged or replaced, the aforementioned terms and conditions shall apply to the substituting parts if not agreed otherwise in the Procurement Order.

5.6   Any other rights under the applicable statutory warranty law of PLATH remain unaffected.

§ 6 Export Regulations

6.1   The Delivery or part of the Delivery may be subject to national, foreign or international trade and export control laws and regulations (hereinafter referred to as "Export Regulations"). For any Delivery subject to export controls under the laws and regulations of the United States, the European Union, and / or the national law or regulation of the country where a Party is situated, each Party shall comply with such laws and regulations and agrees to transfer the Delivery under export control only to persons and/or entities in the places and/or territories specifically allowed in the license and compliance with any other obligations under this agreement. The receiving party undertakes not to export, re-export or otherwise transfer the Delivery to third parties including its own employees, without first obtaining all required US, European Union and/or national authorizations or licenses.

6.2   Obligation to support for obtaining licenses.

Whenever all or part of the deliverables or services are subject to Export Regulations the Supplier shall provide in a timely manner and at no cost to PLATH all relevant classification determinations, official approvals, licenses and authorizations required for the export of the Delivery or part of the Delivery. The responsibility to apply for an authorization lies with the party responsible due to the applicable export control law.

6.3   In the event of the Supplier's non-compliance with the aforementioned obligations to supply the Delivery or part of the Delivery compliant with Export Regulations, the Supplier shall, at its own costs, take the appropriate actions to comply with, by performing all necessary steps in order to obtain from the relevant administration any authorization, with respect to the Delivery or part of the Delivery, necessary for PLATH to deliver and support the Delivery or part of the Delivery.

§ 7 Maintenance, Repair, Modification Work and Technical Support

7.1   The Supplier undertakes towards PLATH to submit upon request of PLATH a binding offer for the maintenance, repair and modification work.

7.2   Furthermore, the Supplier agrees to provide upon request PLATH with a binding offer for technical support by way of deploying personnel for the purpose of instructing and supporting the personnel of PLATH.

§ 8 Intellectual Property Rights, Rights of Use and Enjoyment, Software

8.1   Intellectual Property Rights of Third Parties

8.1.1   the Supplier guarantees PLATH, and by the way of an independent promise of guarantee party in accordance with Sec. 311 BGB (German Civil Code), towards PLATH, that the Delivery to be performed by the Supplier in accordance with the Procurement Order is free of any and all restrictions by third party rights, resulting out of, or in connection with, know-how, patents, copy rights, trademark rights, design rights or any other intellectual property rights (hereinafter "IPR"), even if the Delivery shall be combined or jointly used with services of other parties, unless PLATH agreed explicitly to a restriction on particular IPR in writing. The Supplier shall hold harmless and indemnify PLATH, and by way of an agreement in favor of a third party from any and all claims and rights that third parties assert against PLATH because of an infringement of IPR of the

Delivery, or breach of law by the Supplier in respect of competition and/or anti-trust laws.

8.1.2   PLATH shall be entitled to terminate the Procurement Order by written notification in the event that a third party asserts an IPR against PLATH. Any other provision of this Procurement Order shall remain unaffected.

8.2   Rights of Use and Enjoyment

8.2.1   The Supplier grants PLATH the non-exclusive, irrevocable, transferable, worldwide and perpetual right, to use the delivery. In particular, PLATH is entitled to integrate the delivery or parts thereof into other products, to distribute the delivery or parts thereof worldwide, either integrated or non-integrated, and – insofar as this is necessary in order to achieve the purpose of the contract, to adapt or otherwise alter the delivery or parts thereof and to distribute the results of such activities as aforementioned. The Supplier grants PLATH a non-exclusive, transferable, worldwide and free of additional charge license of the Delivery, especially, without limitation, with regard to any and all computer software being part of the Delivery to be provided by the Supplier under this Procurement Order (hereinafter "Software"), however, limited to the purposes of performance under this Procurement Order.

8.2.2   Without affecting any other provision of a Procurement Order, the rights of use and enjoyment as set forth in sec. 8.2.1 shall encompass with regard to Software in particular the rights:

a)   to exercise and to administer, as well as to have exercised and administered, any and all rights resulting out of, or in connection with, the Software, to improve the Software for any and all appropriate or currently or prospective suitable purposes, especially, without limitation, Defense Purposes, inasmuch within the framework of business of PLATH,

b)   to download, display, run, transfer and save the Software or amended versions of the Software, particularly, without limitation, with regard to maintenance, debugging, virus control, introduction of potential improvements, transfer to other equipment, interfacing and/or dialog ex-change preparation of the Software with other Software or other equipment, as well as with regard to modifications of parameters, and the introduction, modification and deletion of security means, as well as preparation, storage and alteration of backup copies, and development and testing of the Software,

c)   to copy or to have copied the Software for backup purposes.

8.3   PLATH, insofar by way of an agreement in favor of a third party, shall be entitled to transfer the rights as set forth above in full or in part to third parties, inasmuch and insofar as such transfer is necessary to allow an exhaustive use of (a) the Delivery for Defense Purposes of PLATH's customers and (b) the claims and rights under the respective Procurement Orders. The rights of use and enjoyment as set forth above shall not be limited to specific equipment or specific operating Sites.

§ 9 Security and Confidentiality

9.1   The Parties are aware of and herewith acknowledge explicitly that the Parties are under the obligation of keeping confidential any and all information concerning the Delivery that shall be performed under this Procurement Order. Now therefore, PLATH and the Supplier undertake to keep confidential and secure and to not use for any other purpose than the purposes of this Procurement Order, any and all documents, drawings, processes, technical know-how and experiences, as well as any other information and factual circumstances that shall be disclosed in connection with the closing of and the performance under this Procurement Order. Both parties shall commit their respective personnel – also for the time after resignation of such personnel – accordingly to a duty of confidentiality, inasmuch as legally possible. PLATH and the Supplier shall ensure and bring about to commit other companies that they have consulted with regard to the realization of the Delivery, accordingly.

9.2   PLATH shall be entitled to request from the Supplier to refrain from commissioning certain third parties to perform services resulting out of, or in connection with, this Procurement Order, for military, respectively intelligence security reasons.

§ 10 Liability for Claims and Rights

10.1   The Supplier is liable to PLATH according to the applicable statute law.

10.2   The Supplier shall hold harmless and indemnify PLATH from any and all claims and rights of third parties asserted against PLATH. Any other claims and rights of PLATH shall remain unaffected.

§ 11 Miscellaneous

11.1   Amendments to and modifications of a Procurement Order are subject to the written form. This shall also apply to this clause.

11.2   This Procurement Order shall be governed by and construed in accordance with the laws of the Federal Republic of Germany, under exclusion of the UN-Convention on the International Sale of Goods (CISG).

11.3   The exclusive venue for any and all disputes arising out of, or in connection with, the contractual relationship between the Supplier and PLATH shall be Hamburg, Federal Republic of Germany.

11.4   In the event that one or more of the aforementioned provisions should be or become in whole or in part invalid or unenforceable, the validity or enforceability of the remaining provisions shall not be affected or impaired in any way. Any provision which is invalid or unenforceable in whole or in part shall be replaced by a provision which meets the purposes, particularly the aspired economic purpose, of the replaced provision as close as possible.