



Terms & Conditions for Measurement and Fabrication Services

General

- [1] The terms and conditions contained herein apply to all services rendered by the selected TARGET operating agent (hereafter referred to as the "operating agent"), who will be entrusted with the commercial handling on behalf of the TARGET consortium (TARGET - Top Amplifier Research Groups in a European Team, EU FP6 Project TARGET IST-1-507893-NOE), to CUSTOMER as a result of CUSTOMER's participation to TARGET measurement and fabrication services. Any change in or amendment to these terms shall only be valid and only become effective after having been officially agreed to in writing by the TARGET co-ordinator Forschungszentrum Telekommunikation Wien GmbH representing the TARGET team for the purpose of this contract.
- [2] The TARGET consortium – represented by the co-ordinator - will act as a broker and will only establish the contact between the CUSTOMER and the operating agent who is best suited for the services to be undertaken in best faith. Depending on the services to be undertaken more operating agents may be involved where the main operating agent may act as a subcontractor to the additional operating agents.

Prices and Payment

- [3] Prices for services rendered by the operating agent to CUSTOMER shall be in a written quotation.
- [4] All invoices are payable within thirty (30) days after the date of invoice. In case of non- or late payment of any amount by CUSTOMER to the operating agent, such amount shall bear interest at the rate of one percent (1%) per month from the date on which such amount has become due and payable. CUSTOMER will make the payments to the operating agent without withholding or deduction for or on account of any taxes, duties and/or other charges.
- [5] The operating agent has the right to request CUSTOMER for a letter of credit or proof of a sufficient bank warranty, or any other warranty, as the operating agent may deem appropriate to warrant the execution of CUSTOMER of its obligations.

Delivery

- [6] All indicated delivery times are standard delivery times, based on the measurement or fabrication time. The operating agent shall make commercially reasonable efforts to deliver on time. The operating agent may be held liable for any delays or failures to meet delivery dates only insofar as such delays are attributable to negligent acts or omissions of the operating agent's employees or agents in the performance of the service.
- [7] Title to the deliveries and risk of loss will pass from the operating agent to CUSTOMER upon delivery in accordance with the provision stated above.
- [8] The scheduled dates of delivery are the dates of shipment to CUSTOMER's facilities or any other place of delivery specified by CUSTOMER.

Information

- [9] Unless specified to the contrary in the schedule, all relevant information resulting from the service shall be described in a written report which shall be sent to the CUSTOMER. Subject to Clause [14] hereof, the CUSTOMER shall have the right to use such information for any purpose.
- [10] Information at the disposal of the operating agent which is necessary for the CUSTOMER to implement the results of the service will be made available subject to the prior agreement of written terms.

Rights

- [11] Subject to any pre-existing rights of the CUSTOMER, the operating agent and the rights of any third party, the parties agree that:
- a. All Intellectual Property Rights arising from the service will vest in the operating agent as sole beneficial owner, unless specified to the contrary in the schedule;
 - b. The operating agent will be fully entitled to use in any way it deems fit any skills, techniques, concepts or know-how acquired, developed or used in the course of performing the service and any improvements to the operating agent's products made or developed during the course of the service.

Warranty

- [12] The operating agent makes no warranty or representation that the use of any information arising from the service will not infringe the rights of third parties but, if the operating agent staff whilst engaged on the service become aware of any apparent infringement, the operating agent will inform the CUSTOMER.

Liability

- [13]
- a. The operating agent shall be liable for any loss or damage suffered by the CUSTOMER only insofar as such loss or damage is attributable to negligent acts or omissions of the operating agent's employees or agents in the performance of the service.
 - b. The operating agent accepts no responsibility for the use made of any information, materials or equipment arising from the service either by the CUSTOMER or by any third party who has obtained any of the said information, materials or equipment directly or indirectly from the CUSTOMER, except to the extent that the operating agent can be shown to have been negligent in providing such information, materials or equipment.
 - c. The operating agent shall not be liable for, and CUSTOMER hereby assumes the risk of, and will release and forever discharge the operating agent, its agents, officers and employees, either in their individual capacities or by reason of their relationship to the operating agent, with respect to any expense, claim, liability, loss, or damage (including any incidental or consequential damage) either direct or indirect, whether incurred, made or suffered by CUSTOMER or by any third parties, in connection with or in any way arising out of the use of the service results and/or delivery.
 - d. In all cases, the operating agent's liability to customer on any ground and under any law whatsoever shall not exceed a sum equal to the fee paid to the operating agent by CUSTOMER hereunder.

Publicity

- [14] Either party shall have the right to make reference to the service in press releases or promotional materials with the prior consent of the other. This consent shall not be unreasonably withheld.

Confidentiality

- [15]
- a. Subject to the provisions of Clauses [9] and [10] hereof, each party shall take all reasonable measures to keep confidential for the period of five (5) years next following the date of acceptance of this offer, all information which is received from the other party under this agreement and which is specified by the disclosing party to be confidential at the time of disclosure, or which may come to one party's knowledge or is disclosed to it as a result of visiting the premises of the other party.
 - b. This obligation shall not apply to information which either at the time of disclosure,

or after disclosure, is published or generally available to the public other than through a breach hereof, or information already in the receiving party's possession at the time of receipt and which was not acquired directly or indirectly from the disclosing party, or information acquired by the receiving party in good faith from a third party.

Customer Samples

[16] As soon as practicable after acceptance of the quote, the CUSTOMER shall arrange, free of charge and free of risk to the operating agent, the delivery to the operating agent of any samples, equipment, materials and/or information required by the operating agent in order to carry out the services. On completion of the services, the said samples, equipment and/or materials shall be treated as detailed in the schedule or, if no provision is made in the schedule, the said samples, equipment and/or materials shall be retained by the operating agent for a period of two (2) months next following the completion of the service, during which time the CUSTOMER may make arrangements for their collection. Should the CUSTOMER not make such arrangements, the operating agent shall be entitled to dispose of the said samples, equipment and/or materials.

Disclosure

[17] The CUSTOMER may disclose information contained in the operating agent's report only in accordance with the instructions contained therein.

Customer's Acceptance

[18] Unless specifically notified to the contrary by the CUSTOMER in writing within thirty (30) days of delivery customer acceptance of the operating agent deliverable will be deemed to have been given.

Assignment

[19] Neither party shall assign its rights or delegate its duties under these 'Terms and Conditions' without the prior written consent of the other party hereto, except to any party succeeding to substantially all of the business interests of the assigning party.

Dispute Resolution – Applicable Law & Competent Court

[20] These 'Terms and Conditions' shall be governed by and interpreted in accordance with the laws of the country of the operating agent. All disputes in connection to the TARGET services shall first be discussed in good faith between the parties in order to try to find an amicable solution. If no solution can be found to settle the dispute within forty-five (45) days after giving notice to the other party, then either party may submit the dispute for settlement to the court associated with the operating agent. The parties agree that only this court, as the case may be, is exclusively competent to settle such dispute.