

# **TBA General terms and conditions for purchasing goods and services**

## **Contracting Guide**



These General Terms and Conditions apply to purchasing of any Products and/or Services by TBA from Seller, unless the Parties have otherwise agreed in writing.

## 1. DEFINITIONS

TBA	means Ericsson Nikola Tesla BH d.o.o., Kralja Petra Krešimira IV Lamela B-bb, 88000 Mostar, Bosnia and Herzegovina
Customer	means any buyer of TBA
Buyer	means TBA
Order	means Order for purchasing Products and/or Services
Services Failure	means any adverse actions, deficiencies, defects, inactions, or other non-conformities in the Services, including any defects that do not meet the criteria, specifications or otherwise depart from what was agreed, or any part of the Services that does not correspond to the purpose for which the Order was issued
Affiliate	means any legal entity that directly or indirectly controls, is controlled by, or is under common control with, any of the Parties
Products	means Products that are the subject of Order, including software
Seller	means Company receiving the Order from TBA
General Terms and Conditions	means these general terms and conditions for purchasing Products and/or Services
Open Source License	means any license for software that is "open source" or "copyleft" as those terms are commonly understood in the software industry
Business Days	means Normal business days (excluding Saturdays, Sundays, and holidays) of the Seller after having received the Order
Party	means TBA or Seller
Parties	means TBA and Seller jointly
Services	means Services that are the subject of Order



## 2. PRICES, TAXES, AND TERMS OF PAYMENT

The prices of the Products and/or Services set out in the Order are fixed and firm. The Seller is not entitled to charge any additional costs (including taxes, travel expenses, material costs, or any other fees) unless otherwise agreed between the Parties.

Value Added Tax (i) shall not be included in the price, (ii) will be presented separately in the invoice of Seller, and (iii) will be calculated in accordance with the applicable laws and regulations.

In its invoice, the Seller shall include all relevant elements prescribed under applicable laws and regulations, including applicable VAT ID number and the tax clause based on which a particular tax treatment is applied.

In case where, in accordance with applicable laws and regulations, TBA is obliged to withhold the tax from the amount of the invoice, the provisions of the Double Taxation Agreement (DTA) shall be applied providing such agreement is concluded between Bosnia and Herzegovina and Seller's country. For the purpose of applying provisions of the Double Taxation Agreement, TBA and Seller shall exchange all required documents. If mentioned DTA is not concluded between Bosnia and Herzegovina and the Seller's country, provisions of local law of Bosnia and Herzegovina shall be applied.

In the event of withholding a tax from the payment to the Seller, TBA will provide the Seller with a certificate issued by the official body, which will give the Seller a possibility to claim tax refunds based on the tax paid abroad.

The Seller will be liable for all taxes, social benefits, contributions, and other fiscal obligations that may have arisen from providing contracted Services in relation to himself and his employees. Upon TBA's request, the Seller will present evidence that the taxes, contributions, and other fiscal obligations have been settled.

The invoice of Seller will include the Order number and Product/Services number. Each invoice will relate to one (1) Order and will be sent to the TBA location set out in the Order.

Undisputed invoices, issued on the basis of the Order, will be paid within the term and in currency specified in the Order. The Parties agree that payments will be made via wire transfer, whereby each Party will bear its own costs related to such transaction.

The default interest rate, prescribed under applicable laws, will be charged for delays in payment which exceed seven calendar days from the due date under the invoice.



### 3. CONFIRMATION OF ORDERS

TBA will issue the Order specifying which Products are to be delivered and Services to be performed, the price, time schedule, delivery point of the Product and/or provision of Services and other special conditions related thereto.

The Seller will deliver confirmation of the Order within three (3) Business Days by invoking on the number of the Order. If the Seller (i) does not send a confirmation of the Order within three (3) Business Days as of a receipt thereof, or (ii) if the Seller has not rejected the Order within three (3) Business Days as of a receipt thereof, or (iii) if the Seller has started delivering the Goods and/or providing the Services, the Order shall be deemed accepted in its entirety.

### 4. SHIPPING DOCUMENTS AND PACKING

Package costs shall be included in the price. Products will be packaged and labeled in accordance with instructions of Buyer. In all circumstances, packaging will ensure Product protection from damage or drop in quality under normal shipping conditions. The packaging material must be marked in accordance with applicable laws and regulations. Wooden packaging and/or pallets used in the delivery of the Product must be handled in accordance with the laws and regulations which prescribe corresponding phytosanitary requirements. In the shipping documents, the Seller agrees to specify the following:

- Order number;
- marking and quantity of the Product; and
- gross and net weight per each shipment and net weight for each product.

When delivering a Product, the Seller will enclose a guarantee sheet specifying the date on which the Order is delivered and the validity of the guarantee (if applicable).

The Seller agrees to provide a serial number list for all repairable units and units for which maintenance can be ordered when delivering the equipment. Seller will send the list of serial numbers via email in "excel" or other tabular form to the responsible person of the Buyer who submitted the Order.

All of the above, to the extent applicable, shall be also applied to the Services.

### 5. TERMS OF DELIVERY

The delivery terms of Products shall be done in accordance with the INCOTERMS 2010.

Delivery of Product and/or Service shall be performed within the term specified in the Order. Delivery of the Product shall be deemed to have been executed when designated warehouse of the Buyer confirms (by the signature of its responsible person) that the Products are delivered in accordance with the Order and when



the Representatives of the Seller and the Buyer sign the Minutes on Technical Receipt (hereinafter the "Minutes"), if applicable. The Minutes shall be signed upon conducting the quality control of the installed Products and/or Services by Buyer. Quality control is a procedure which is used to determine whether Products delivered by the Seller are in working order, whether, all of the Services have been performed, whether those meet all required technical conditions, and whether the function can be released into operation. The Service is deemed to have been executed when TBA confirms (by the signature of its representative(s)) that the Service was executed in accordance with the Order and when Seller and TBA representatives sign the Minutes (if applicable).

## 6. CONFIDENTIALITY

The Parties undertake not to disclose to any unauthorized person or any third party, without prior written consent of the other Party, confidential information related to or in connection with the Order, including, but not limited to, commercial, financial, technical, or strategic information that are disclosed by one Party to other Party while executing the Order, notwithstanding if those are delivered in writing or in an oral form.

A Party which violates the obligation to keep information confidential as prescribed under this Article, shall be liable for any damage caused to the other Party thereunder.

No Party shall be liable for disclosure or use of confidential information which:

- a) are already or have become known to the public, except by breach of these General Terms and Conditions; or
- b) must be disclosed on the basis of the relevant regulations in accordance with the request by competent authority; or
- c) have become known to the receiving Party without breaching the confidentiality conditions prior to disclosure by a disclosing Party; or
- d) at any time have been lawfully received from a third party without limitation in relation to their receipt or use (providing that such third party has lawfully and on basis of the valid authorisation made a disclosure to the Receiving Party)

TBA may disclose the documentation and/or confidential information to (i) any Customer, and/or (ii) any external consultant, providing TBA ensures that upon receipt of the confidential information they will comply with the confidentiality requirements prescribed under these General Terms and Conditions, or requirements equally or more restrictive than these General Terms and Conditions, and if such disclosure is in line with the purpose for which the Order was issued. For avoidance of any doubt, nothing in these General Terms and Conditions shall restrict TBA from disclosing, or otherwise using confidential information internally or with its Affiliates in line with the purpose for which the Order was issued.



The obligation to maintain confidentiality of the information as prescribed under this Article shall remain in force for 5 (five) years after the termination of the Order.

## 7. PRIVACY AND DATA PROTECTION

The Parties agree that they will provide each other only with personal data relating to usual business contact details of their employees (e.g. business emails, business phone numbers, job position, business location etc.) which is necessary for administrating an Order.

In case the receiving Party wishes to process the said personal data for any other purposes (for example for connecting it with a data collected in other ways for the purpose of profiling), then the receiving Party shall collect specific and individual consent(s) from the data subject(s) concerned, and provide easy means for later opt-out.

## 8. DELAYS IN DELIVERY

Should the Seller discover that the delivery date set out in the Order cannot be met, it shall immediately notify TBA in writing, stating the cause of the delay and its best estimate on when delivery can be made. Such notification shall not limit the Seller's liability under the Order and/or the applicable laws.

In case of a delay in a delivery, TBA shall have the right to claim liquidated damages from the Seller for each week of the delay, in the amount of (1%) one percent of the price referable to the Order that has been delayed. The liquidated damages, however, shall not exceed a total of twenty (20%) percent of the Order that has been delayed.

Notwithstanding its right to ask for damage compensation, TBA shall be entitled to cancel the Order due to delay in delivery.

## 9. QUALITY

To the extent relevant for the Goods and Services, the Seller shall comply with the requirements of the ISO 9000 family of quality management systems standards, the ISO 14000 family of environmental system standards and the ISO 27000 family of information security standards.

If the Seller does not comply to the ISO 9000, ISO 14001 and ISO 27000 or equivalent standards, the Seller shall on or before the execution of the Order provide TBA with a plan for implementation of the said standards.

Seller undertakes to comply with the applicable requirements in Ericsson Nikola Tesla Group Code of Conduct for Business Partners (hereinafter: the "Code of Conduct"), or such equivalent code of conduct jointly agreed by the Parties. If Seller does not comply with the Code of Conduct or equivalent code of conduct, Seller shall provide TBA with a plan for implementation of the said Code of Conduct. In addition, Seller shall also, in all relevant aspects, comply with (i) Ericsson's Baseline Information Security and Privacy Requirements for Suppliers



(hereinafter: the "BISPRS"), (ii) Ericsson's General and Specific OHS requirements, (iii) Ericsson's directive regarding banned and restricted substances, (iv) Ericsson's supplier environmental requirements, and (v) all other Ericsson's policies, directives and regulations that from time to time apply to Seller for Goods sold to TBA.

The all-time latest version of requirements specified above can be found at:

<https://www.ericsson.hr/en/suppliers>

[Anti-corruption-for-suppliers](#)

## 10. REFFUSAL OF PRODUCTS/SERVICES

Product acceptance may be rejected, in whole or partially, and the Products returned to the Seller at Seller's risk and expense within seven (7) calendar days of delivery, if:

- products were not delivered in accordance with the ordered quantity; or
- products were delivered with visible deficiencies and/or damages; or
- there were other deviations in comparison to the specification set out in Order.

The Seller agrees to continuously document current work on the Services and regularly submit a report in that respect to the TBA contact person. Upon TBA's request, the Seller shall make available any collected unprocessed data, working documentation or service-related data generated in connection with the Services. Upon completion of the Services, the Seller will make Services available to TBA for review, including a submission of the report on completed Services. The Seller will prepare a report on completed Services in accordance with the TBA's instructions. TBA will approve or reject, in whole or in part, in writing, the Services within 5 (five) Business Days as of the day of receipt of report on completed Services. This will not affect Seller's obligation to immediately, and at his own expense, remedy all Service Failures reported to him by TBA, and within term of five (5) Business Days as of receipt of such report from TBA. Otherwise, TBA shall have the right to ask for performance of respective Services from a third party, at the expense of Seller.

## 11. WARRANTY

The Seller agrees that the Product and/or Service delivery will be provided professionally and in accordance with the conditions of the Order. During the warranty period of twenty-four (24) months from the delivery and/or acceptance of the Service, pursuant to Article 5 (Terms of Delivery) of these General Terms and Conditions, the Seller shall replace, at its own expense, defective Products with the correct ones and/or rectify the Service Failure(s). Seller will provide



spare parts and technical support for ordered Products for a period of seven (7) years as of their delivery.

## 12. DAMAGE COMPENSATION

If delivered Products have a deficiency that has caused damage to the TBA and/or Customer, the Seller will compensate TBA and/or a Customer for it. If a Service Failure causes damage to the person or property of TBA and/or Customer, the Seller will reimburse TBA and/or Customer for it. The Seller will ensure that TBA and/or Customer are not subject to damage of property or personal injury (including death) resulting from deliberate actions, negligence or omission of their employees or subcontractors in connection with the execution of the Order. In the event of damage suffered by the person and/or the property of TBA and/or Customer, Seller shall reimburse TBA and/or Customer for it.

## 13. FORCE MAJEURE

The performance of either Party, required by Order, shall be extended by a reasonable period if such performance of the respective Party is impeded by an unforeseeable event beyond such Party's control, which shall include but not be limited to acts of God, industrial actions, riots, wars, accidents, embargo, or requisition (acts of government) (hereinafter: the "Force Majeure"). In case of Force Majeure, each Party shall promptly notify and furnish the other Party in writing with all relevant information related to such events. Should an event of Force Majeure continue for more than three (3) months, TBA shall have the right to terminate the Order. In such a case, TBA shall pay to the Seller the price of Goods and/or Services delivered up to the date of the termination.

## 14. EXPORT AND IMPORT

Seller is responsible for obtaining and maintaining any license(s) required for delivery of Goods and/or Services to TBA in accordance with the Order. At the request of TBA, the Seller will issue any documentation required for the export and/or import of the ordered Products and/or Services. If Seller is unable to obtain or maintain the export and/or import license(s), TBA may cancel the Order or part(s) thereof affected by such license(s). Seller shall inform of, and issue all documentation which may be required by law, other regulation or reasonably requested by TBA regarding the export, import or re-export of the Goods and/or Services. In particular, the Seller is responsible to continuously provide detailed technical documentation, certificate of origin (both for so called commercial and preferential origin), COC – Certificate of Conformity, and the so-called export control classification number (i.e., the "ECCN code") for the Goods and/or Services according to the SE/EU/US export administration regulations, or the corresponding data according to other applicable regulations. Such information shall be updated on an ongoing basis when new regulations come into effect. Seller shall provide the information requested by TBA in accordance with previous sentence within one (1) calendar week from the request.





## 15. INTELLECTUAL PROPERTY RIGHTS

The Seller guarantees that TBA can trade and sell Products and/or Services worldwide as part of the TBA product system, without infringing anyone's patent or intellectual property rights (hereinafter collectively, "IPR"). In the event of a violation of such rights, the Seller shall indemnify TBA and/or its Affiliate and/or Customer for any damages suffered thereunder. If Seller has included any of its and/or third party's IPR (including software subject to Open Source License) in Goods and/or Services or otherwise based or made the Goods and/or Services dependent on such IPR, the Seller ensures, grants and warrants that (i) TBA at all times has and is granted a worldwide, perpetual, royalty free license to use such IPR for any purpose whatsoever (including but not limited to, a right to sublicense, develop, modify and/or create derivative works) in relation to exploitation of the Goods and/or Services, or internal use thereof and that (ii) such license and use rights are not, and will not be hindered or otherwise affected by any third party licensing terms or restrictions (including Open Source License terms) having adverse effect on TBA's ability to exploit or use the Goods and/or Services as intended. Seller may only use TBA's IPR as per TBA's written instructions and only to the extent necessary for delivery of particular Goods and/or Services for which such IPR (if any) has been developed and/or made available by TBA to Seller under and for a specific Order. If Seller engages subcontractor(s) for delivery of Goods and/or Services, such subcontractor(s) may -- subject to TBA's prior written approval - only use ETK's IPR to the same extent that Seller may use it in accordance with this Article. Neither Seller, nor its subcontractor(s) have any further right to use, alter and/or modify TBA's or its Affiliate's IPR for any purposes whatsoever.

## 16. DOCUMENTATION

All documents, drawings, sketches, other data kept on appropriate media, as well as programs submitted by TBA to the Seller, shall remain the sole property of TBA and, on TBA's request, shall be returned to TBA. Seller warrants that such TBA property will be protected and stored in the appropriate manner.

## 17. AMENDMENTS

Any amendments to these General Terms and Conditions which apply to individual Order shall be delivered to the Seller in writing. Seller accepts amendment(s) if, within 5 (five) Business Days as of the delivery thereof by TBA to Seller, TBA does not receive Seller's written objection to an amendment of a particular provision of these General Terms and Conditions. TBA shall warn the Seller of this when delivering the amendment(s).

## 18. CONFLICT OF INTEREST AND ANTI-CORRUPTION CLAUSE

The Seller is obliged to notify the TBA if any TBA employee or its family member is a majority owner of the Seller or if any employee of TBA has family members at management positions in Seller's company.

Seller guarantees not to solicit any TBA employee(s) without informing TBA about it.



The Seller represents and warrants that the Seller, including its's employees and subcontractors, shall not make, in or for the Order any payments, loans, gifts, promises or offers of payments, loans, gifts of any money or anything of value, directly or indirectly, (i) to or for the use or benefit of any official or employee of any government or an agency or instrumentality of any such government, (ii) to any TBA's personnel, agents, consultants or other persons engaged, (iii) to any political party or official or candidate thereof, (iv) to any other person if the party making or offering such payments, loans, gifts or promises or offers knows or has reason to know that any such payment, loan, or gift will be directly or indirectly given or paid to any governmental official or employee or political party or candidate or official thereof, or (v) to any other person or any entity, the undertaking, commitment, provision, payment or other execution of which would violate the laws or regulations of any country in which the Order is to be performed, or the country or countries of such person or entity, or of the Parties hereto.

#### 19. CANCELTION OF ORDERS

Either Party may at any time cancel the Order, with immediate effect and without compensation to the other Party if the other Party should pass a resolution, or any court should make an order, that the other Party shall be wound up or if a trustee in bankruptcy, liquidator, receiver, or manager on behalf of a creditor should be appointed or if circumstances shall arise which would entitle the court or a creditor to make a winding-up order, or if it otherwise is likely that the other Party is insolvent.

Notwithstanding the previous paragraph, either Party may cancel the Order with immediate effect if the other Party has committed a material breach of these General Terms and Conditions and/or the Order, and has not rectified the same within ten (10) days as of receiving a written notice specifying the breach.

Notwithstanding the previous paragraphs, TBA may cancel part of the Order which is not yet delivered, providing that the Cancellation notice is sent to Seller thirty (30) days prior to planned delivery.

Cancellation notice must be sent by registered mail with a return receipt or via e-mail. Delivery of Cancellation notice will be deemed successful; either on the date stated as delivery date on return receipt. at a post office if the notice was sent via registered mail, or if sent via e-mail on the date of received confirmation from the Seller side on receipt of Cancellation notice, where if Seller does not send confirmation of Cancellation Notice receipt via email, within 3 working days from the sent Cancellation notice, the Cancellation notice will be considered successful. In case the delivery in accordance with the previous sentence has not been successful for any reason, the Parties agree that the delivering Party shall send a second notice in identical manner, and, if for any reason, that second notice also could not be delivered, it shall be considered that the delivery was successful on the day when the notice was filed with the postal office or on a day sent via e-mail, and on the following day the periods stipulated therein shall start to run (if applicable).



Upon Cancellation of the Order TBA shall pay the price to the Seller for the Goods and/or Services delivered by the Seller and accepted by TBA in accordance with the terms and conditions of the Order and these General Terms and Conditions, and which are due until the cancellation date.

Provisions contained in these General Terms and Conditions that are expressed or by their sense and context are intended to survive the expiration or cancellation of the Order, shall so survive the expiration or cancellation.

## 20. GOVERNING LAW AND DISPUTES

All disputes arising out of the Order, including disputes relating to issues of its existence, breach or cancellation, and the legal effects resulting therefrom, shall be finally settled before the competent court in Sarajevo, and under the applicable laws of Bosnia and Herzegovina.

In case of a dispute with Ericsson Nikola Tesla d.d. Zagreb, it shall be submitted for final settlement to arbitration under the Rules of Arbitration of the Permanent Arbitration Court at the Croatian Chamber of Economy (Zagreb Rules), under the applicable laws of Republic of Croatia. For that matter, there shall be 3 (three) arbitrators, language shall be Croatian, and the place of the arbitration shall be Zagreb.

## 21. APPLICATION

These General Terms and Conditions form an integral part of the Order and are applicable from the time the Order is issued, and until any phase of the procurement procedure specified in these General Terms is in progress, irrespective of the time and manner of its completion.