

# Continental Aerospace Technologies GmbH

## General Terms of Delivery

### **1. General Provisions, Scope of Application**

- (1) Unless agreed otherwise, these General Terms of Delivery ("GTD") shall exclusively apply to all of our - including future - deliveries of goods and provisions of services to business operators, legal persons under public law and special funds under public law. The Purchaser accepts these GTD by placing an order, however no later than by accepting delivery of an order. We hereby reject any contrary or differing general terms and conditions of the Purchaser. We do not accept these. They shall neither become terms of the Contract through the acceptance of the order, nor through any other implied act, even if this occurs with the knowledge of contrary terms and conditions or the Purchaser's terms and conditions deviating from our GTD.
- (2) Our contracting parties are herein referred to as "Purchasers", independently of their designation in the legal sense arising from the respective Contract.
- (3) Collateral agreements, amendments and supplements hereto – including the clause referring to the written form requirement – shall only be effective if made in writing.

### **2. Conclusion of the Contract, Prices**

Orders shall only be accepted upon our written confirmation. Our offers and prices are not binding. Unless agreed otherwise, our prices are based on the material and wage costs applicable on the day of the offer or the price list applicable at this time. The prices valid at the time of our acceptance of the order shall apply to an order. All prices are ex works (EXW INCOTERMS 2010), exclusive of the relevant VAT required by law as well as exclusive of transport and packaging. If the order is fulfilled later than 4 months after the conclusion of the Contract, we shall be entitled to adjust the prices to the extent of higher costs for wages and/or materials having been incurred.

### **3. Delivery, Delivery Period, Delay in Delivery**

- (1) Delivery dates and periods shall only be binding for us if we have expressly confirmed them in writing as being a fixed delivery date. Delivery periods shall commence upon the conclusion of the Contract, however no earlier than as from the final agreement on the questions to be clarified with the Purchaser before the start of production.
- (2) In the event of a late, deficient, quantitatively inadequate or non-performed service by the preliminary supplier or in the event of the procurement of goods being reasonably unacceptable for us, and in the event of force majeure, labour disputes, interruptions of operations not caused by anyone's negligence, riots, measures taken by public authorities and other unforeseeable, extraordinary events not caused by our negligence and affecting our business or the business of a preliminary supplier, of which we shall notify the Purchaser, we shall be entitled to extend the delivery dates and periods to an appropriate extent or rescind the Contract as a whole or in part. If the delivery time is extended or we are exempted from our delivery obligation, the Purchaser may not derive any claims for damages from this provided neither we nor a preliminary supplier are at fault. In the event of such a postponement of the service by more than 4 months, the Purchaser may rescind the Contract. This shall not affect any other rights of rescission.
- (3) If we default in delivery for reasons for which we or our vicarious agents are responsible, we shall only be liable in the event of intent or gross negligence or if the default in delivery for which we are responsible is based on the breach of an essential contractual obligation (see Section 9 below).
- (4) If we are in default and the Purchaser incurs damage or loss as a result of this, the Purchaser may claim compensation for the default. The compensation shall be limited to 0.5% for each full week of the delay, in total however no more than 5% of the value of the part of the overall delivery that cannot be used in good time or in accordance with the terms of the Contract as a consequence of the delay. This restriction shall not apply however if we have caused the delay intentionally; in any other respect Section 9 (3) shall apply mutatis mutandi. We are permitted to show that the delay caused either no damage or that the damage occurred is substantially less than the lump sum. The Purchaser may only rescind the Contract in accordance with the statutory provisions if we are responsible for the delay in the delivery.
- (5) Deliveries in instalments shall be admissible provided this is not unreasonable for the Purchaser.

#### **4. *Shipment, Passing of the Risk, Packaging***

- (1) The delivery shall be carried out EXW INCOTERMS 2010 from the place stated by us for the account and at the risk of the Purchaser. The risk of the accidental perishing or loss or accidental deterioration of the item shall pass upon its delivery to the Purchaser. If the goods are ready for shipment and the shipment or taking delivery of the goods is delayed for reasons for which we are not responsible, such risk shall pass upon notification of readiness for shipment to the Purchaser. In the event of shipment, such risk shall pass to Purchaser at the latest upon delivery to our own or third party means of transport of our choice.
- (2) Palettes, containers and other reusable packaging shall remain our property and must be returned to us immediately free of charge by the Purchaser. Transport packaging and all other packaging shall not be taken back. The Purchaser is obliged to provide for the disposal of such packaging at his own expense.

#### **5. *Payment, Right of Set-off, Right of Retention***

- (1) Unless otherwise agreed in writing our invoices shall be payable immediately and before delivery without deductions by bank transfer to one of our accounts. This shall also apply to invoices for deliveries in instalments. We expressly reserve the right to reject payment by cheque. Cheques shall only be accepted as conditional payment on account of performance. Ancillary costs, in particular banking charges, shall be borne by the Purchaser.
- (2) The Purchaser shall be in default in payment as from the time of expiration of the date for payment, unless the Purchaser is not responsible for the default. In the event of a default in payment, the Purchaser must pay default interest to the amount of 12%, however at least 8 percentage points above the basic interest rate. If the interest provided under sentence 1 is more than 8 percentage points above the basic interest rate, the Purchaser shall be free to prove that the damage or loss caused by his default has not been incurred or not been incurred to this amount. The assertion of any greater damage or loss caused by default shall not be excluded.
- (3) If the Purchaser fails to comply with the agreed terms of payment or we become aware of circumstances that point to a deterioration in the state of affairs of the financial situation of the Purchaser, all of our accounts receivable shall become due immediately.
- (4) The Purchaser may only set-off claims if his counterclaims are undisputed or have been confirmed by a final court decision. The Purchaser shall not be entitled to any right of retention.

#### **6. *Retention of Title and Assignment of Future Claims***

- (1) We shall retain title to the goods delivered ("reserved goods") until such time as all our actual and future claims, for any legal reason whatsoever, including the respective balance arising from any form of current account between the parties, are satisfied. Any processing or transformation of reserved goods shall be carried out for us as the manufacturer, however, without any obligation for us. In the event of the processing or combining of reserved goods with other goods not belonging to us, we shall be entitled to the co-ownership of the new product at a ratio of the gross invoiced value of the reserved goods to the current market value of the other goods used. If the Purchaser acquires the sole ownership of the new product, he hereby transfers to us co-ownership of such a product to the ratio of the gross invoiced value of the reserved goods used. Any new products shall be kept for us free of charge by the Purchaser with the reasonable care of a merchant. The Purchaser shall only be entitled to resell the reserved goods or any products resulting from the processing in the ordinary course of business after agreeing to the retention of title. He is not entitled to pledge reserved goods or transfer ownership by way of security. The Purchaser hereby assigns to us in advance all claims including all ancillary rights arising from the sale or other use of the reserved goods. In the event of the sale or other use of the reserved goods with items in which third party rights exist, only the partial amount corresponding to the gross invoiced value of the reserved goods used shall be assigned to us. The debt claims assigned shall serve as security for all claims under Section 5 (1).
- (2) The Purchaser shall be authorized to collect the debt claims assigned. In the event of default in payment, suspension of payments, petition for or the commencement of insolvency or composition proceedings or in the event of otherwise dwindling assets of the Purchaser, as well as in the event of a failure to comply with the duties pertinent to the Purchaser arising from the retention of title, we may revoke the authorization to collect the debt claims and demand that the Purchaser notifies us of the debt claims assigned and their debtors, furnishes all information necessary for the collection, hands out the related supporting documents and notifies the debtor of the assignment. Subject to the same preconditions, we are entitled to revoke our assent to the resale and/or processing of the reserved goods.

- (3) The Purchaser must notify us before seizures of the reserved goods or of the claims assigned to us by third parties. The Purchaser must reimburse us for the costs incurred to avert the encroachment by third parties.
- (4) If the realizable value of the securities existing for us exceeds our total debt claims by more than 10%, upon the demand of the Purchaser, we are obliged to release the surplus securities; the choice of the securities to be released shall be incumbent on us.

## **7. Notices of Defects**

The Purchaser is obliged to inspect the goods immediately after receipt – in any case before installation. Complaints about the quantities delivered and any defects must be notified in writing within 10 days after the receipt of the goods – in the event of concealed defects within the same period after the detection of the defect; failing this, all warranty claims shall be excluded. Our receipt of the notice of defects shall be decisive in respect of this time limit.

## **8. Warranty**

- (1) Unless a longer limitation period is prescribed by a mandatory statutory provision, the limitation period for material defects shall be 1 year after the delivery of the delivery item. This shall also apply to claims for damages for consequential harm caused by a defect, unless claims in tort are asserted.
- (2) If we are responsible for a defect of the delivery item, we will remedy the defect or carry out a replacement delivery in exchange for the return of the deficient goods or parts thereof at our discretion. Necessary costs of such rectification or replacement, such as costs for labor, material and transportation, will be assumed by us to the extent these costs are not increased due to the subsequent transfer of such goods to another location than the Purchaser's registered place of business, unless such transfer is in line with the intended use of such goods. The Purchaser must notify us of any claims in respect of a delivery item. If we are not prepared or not in a position to remedy the defect/carry out a replacement delivery, or this is delayed beyond reasonable periods for reasons for which we are responsible or the remedy of the defect/replacement delivery is unsuccessful in another way, at its choice the Purchaser may demand a reduction of the purchase price or rescind the Contract. The remedy of the defect/replacement delivery shall only be deemed as unsuccessful if and as soon as 2 periods set for us for such performance have expired without result. The preconditions for the exercise of the right of rescission shall be determined in accordance with § 323 BGB (German Civil Code).
- (3) Warranty claims and claims for damages shall be excluded to the extent that deteriorations of the delivery item are due to natural wear and tear or improper handling of the delivery item. This shall apply in particular to such deteriorations that occur due to improper repairs by the Purchaser or an unauthorized third party. The warranty shall exclude defects to which the delivery item is not already subject at the time of the passing of the risk as well as for defects that are based on false handling, unworkmanlike assembly or installation, failure to follow operating and/or servicing instructions, use of operating substances not corresponding to the original specification specified by us, or natural wear and tear. The Purchaser must demonstrate and prove that the assembly, installation and maintenance of the delivery item were carried out competently.
- (4) If a defect is based on a deficient assembly instruction, our warranty obligation shall only exist if the assembly and the installation of the delivery item were carried out competently in all other respects. The Purchaser must demonstrate and prove that the assembly or the installation was carried out competently.

## **9. Liability**

- (1) We are liable for damages – apart from expressly warranted qualities or in case of a guarantee - only in the case of intent or gross negligence. We are not liable for damages caused by a deficient delivery item due to ordinary negligence. This limitation on liability shall not apply if we intentionally or negligently breach a material obligation of the Contract.
- (2) Unless an intentional or grossly negligent breach of Contract is imputed to us, our liability shall be limited to the foreseeable and typical damage or loss at the time of concluding the Contract. In other respects, the liability for damages shall be excluded; in this respect, we are in particular not liable for damage or loss that has not arisen in respect of the delivery item. If the damage or loss is covered by an insurance contract concluded by the Purchaser for the case of damage or loss concerned (excluding fixed-benefit insurance), we shall only be liable for the

disadvantages for the Purchaser in respect of this insurance, e.g. higher insurance premiums or interests paid up to the adjustment of loss by the insurer.

- (3) The limitation of liability shall not apply in cases of mandatory statutory liability, in particular to any liability under a Product Liability Act and as regards liability for any damage resulting from injury to life, body or health and in so far as we have given a specific guarantee for an item.
- (4) The quality of the delivery item shall only be considered as warranted insofar as we have given a warranty explicitly in writing. Details stated in the catalogue and in lists shall constitute no warranty or guarantee. Likewise, all details in our offers and confirmations of orders concerning dimensions, weight and other technical data shall not constitute a warranty or guarantee.
- (5) Insofar as our liability is ruled out, or limited, this also applies to the personal liability of our employees, workers, personnel, legal representatives, and agents.

### **10. Business Operator's Recourse**

- (1) If the Purchaser resells the delivery item to a consumer in the course of his business operation and had to take back this item or reduce the purchase price as a consequence of its defectiveness, the Purchaser may assert his claims based on a warranty of quality without setting a time limit.
- (2) In addition, the Purchaser may demand the reimbursement of the expenses that he had to bear in relation to the consumer if the defect asserted by the consumer already existed at the time of the passing of the risk to the Purchaser. Expenses shall in particular be transport costs, travel costs, labour costs and material costs.
- (3) The liability is limited according to Section 9.

### **11. Use of Software**

- (1) If software is contained in the scope of the delivery, the Purchaser shall be granted a non-exclusive, non-transferable right limited in terms of time in accordance with the provisions on the scope of the delivery to use the software including its documentation in connection with the delivery item for its own, internal business purposes. Reproduction of the software shall not be permitted unless to the extent this being a mandatory requirement for the software use in accordance with the above. Use of the software in connection with more than one delivery item shall be prohibited. The granting of sub-licences as well as any distribution of the software shall be inadmissible.
- (2) The Purchaser may only reproduce, alter, translate the software or convert the object code to the source code to the extent permitted by mandatory law (§ 69a et seq. German Copyright Act (UrhG)). Before accessing the software source code in order to provide interoperability with other software, the Purchaser shall grant us a reasonable period to provide the Purchaser with the required interface information. The Purchaser undertakes not to remove or delete manufacturer's information – in particular copyright notations - or change these without our express prior written consent.
- (3) We reserve and retain all other rights to the software and the documentation including copies.

### **12. Right to tender**

- (1) We can make the conclusion of the contract with the Purchaser dependent on the fact that the Purchaser acquires, in addition to a currently offered item ("Purchased Item"), a right to tender (option) for the purchase by us of the item which is to be replaced by the Purchased Item ("Replacement Item"; the right of the Purchaser hereinafter referred to as "Right to Tender"). In such cases, the Right to Tender and the price shall be stated in the offer documents.
- (2) The purchase price for the Replacement Item in the case of tender corresponds to the net price for the Right to Tender plus statutory VAT.
- (3) The Purchaser may exercise the Right to Tender by sending us the Replacement Item within three years of delivery of the Purchased Item, complete, free of damage, including the complete aviation documentation and after removal of any liquids present (exclusion period). Delivery will be carried out DDP Incoterms 2010 to Continental Aerospace Technologies GmbH, Platanenstraße 14, 09356 St. Egidien, Germany. After receipt and inspection of the Replacement Item, we will refund the purchase price to the Purchaser in accordance with para. (2) and issue a corresponding credit note.

- (4) The Purchaser is not obliged to exercise the Right to Tender. Upon expiration of the exclusion period, the Right to Tender shall expire; we shall not be obliged to repay the consideration received for the acquisition of the Right to Tender.

### **13. Confidentiality**

- (1) The Purchaser and we shall treat all information obtained from the other party confidentially. This obligation shall not apply to information that was already known to the receiving party by justified means without an obligation to treat it as confidential upon receipt, or that is subsequently known by justified means without an obligation to treat it as confidential or which - without a breach of contract by one of the parties - is or becomes generally known.
- (2) We reserve title and any rights to the supporting documents or data/data carriers made available. Reproductions and the passing on of such supporting documents or data/data carriers shall only be admissible with our prior written consent.

### **14. Advice, Construction Changes**

- (1) Unless otherwise agreed in writing, our advice and, if necessary, project preparations shall be carried out non binding and without giving rise to any legal obligations. As regards warranty and liability, the above-mentioned provisions shall apply mutatis mutandi.
- (2) We reserve the right to carry out technical structural changes at any time. However, we shall be under no obligation to carry out such changes to contract goods already delivered.

### **15. Export controls**

- (1) When dealing with Continental Aerospace Technologies GmbH, the customer undertakes to observe all applicable national, European, and US export control provisions, including all European or US sanctions lists (jointly referred to as export control provisions).
- (2) The customer is obliged to immediately inform Continental Aerospace Technologies GmbH in writing of any circumstances which come to the customer's knowledge after the conclusion of the contract which might lead to the assumption of a potential or actual infringement of export control provisions.
- (3) Delays in delivery which are caused by the length of procedures for the issue of an export licence, will not substantiate a delay in delivery on the part of Continental Aerospace Technologies GmbH.
- (4) If a licence is refused or if the intended export operation is prohibited pursuant to national, European, or US law, Continental Aerospace Technologies GmbH will be exempted from the contractual obligation of delivery.

### **16. Place of Performance, Applicable Law and Place of Jurisdiction**

- (1) The place of performance for deliveries or services shall be the place from which we deliver goods or provide services. The place of performance for payments shall be our registered office.
- (2) For all legal relations between the parties, German law shall apply to the exclusion of the conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG). Clauses usual in commercial practice must be interpreted in accordance with the wording of the Incoterms of the International Chamber of Commerce (ICC) valid at the time of the conclusion of the Contract.
- (3) The place of jurisdiction for all disputes arising from the business relationship shall be Zwickau, Germany; we may however also bring a legal action at the principal place of business of the Purchaser.

### **17. Final Provisions**

- (1) Should one provision of these GTD and further agreements reached be or become ineffective or unenforceable, this shall not affect the validity of the terms and conditions in other respects. The contracting parties are obliged to replace the ineffective provision by a provision that comes closest to it in terms of its economic result. The same shall apply mutatis mutandi for any gaps in these GTD.
- (2) We point out that we store personal data in compliance with the statutory provisions and process this in connection with business transactions.

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