

# General Supply and Payment Conditions of Aerotechnik E. Siegwart GmbH, 66299 Friedrichsthal

## **I. Validity**

1. Any our offer, service and delivery shall be exclusively subject to these General Supply and Payment Conditions. They are incorporated into all the contracts we make with our contracting partner (later as a Customer) in the future as well.

2. Deviant or additional Business Conditions of our contracting partners or a third party cannot be applied as well, if we do not expressly object to their applicability in the individual case.

Even if we refer to a letter which contains or refers to the terms and conditions of our contracting partners or a Third Part, it does not constitute agreement to the applicability of such terms and conditions.

## **II. Offer and Contracting**

1. Any offer of us are subject to change and not binding, to the extent they are not expressly marked as binding or they do not contain a binding period.

2. We can accept orders or assignments sent to us within 14 calendar day.

3. Only the contract concluded in written including these General Supply and Payment Conditions is decisive for the right relationships between our contracting partners and our company.

Any verbal agreements or amendments will be replaced with a written contract, unless otherwise stated providing that they remain binding in full force and effect.

4. All the supplements and amendments of the affected agreements including these General Supply and Payment Conditions require a written form. The transmission by telecommunication per telefax or E-Mail is enough to keep the writing form.

5. Details regarding the object of our deliveries and services (e.g. weights, measurements, use, capacity, tolerances and technical data) as well as illustrations of this (e.g. diagrams and illustrations) are only approximate, unless the purpose of the contract requires an exact conformity. They are not guaranteed attributes, rather descriptions or labeling of the supply or performance. Normal discrepancies (customary in trade) those that arise due to legal requirements or that represent technical improvements as well as the replacement of component parts with parts to an equal value, are admissible as long as they do not affect the usability for the purpose intended under the contract.

## **III. Provided Documents**

We reserve ownership and copy rights in offers and quotations placed by us as well as in all drawings, illustrations, calculations, brochures, catalogues, models, samples, documents, tools and other resources provided to the customer by us in connection with initiation of contract-related negotiations. The customer may not make them available or disclose them to the third parties, nor may the customer use them directly or via third parties or reproduce them without our expressed consent. Upon our request the customer shall fully return such documents to us, if they are no longer required by it in ordinary course of business or if negotiations do not result in the conclusion of a contract. This only excludes the storage data for back-up purposes within the scope of standard data back-up.

## **IV. Prices and Payment**

1. Our prices apply to the fulfilled service and delivery stated in the written contract or in our order confirmation. Additional or special performances are charged for separately. Unless otherwise expressly written agreed, our price are stated in EUR ex works plus packaging, value-added tax, customs duty in case of export as well as other occurring fees.

2. All invoiced amounts are payable immediately without discounts unless it is otherwise agreed in writing.

The payment shall be exclusively affected only to one of bank accounts provided by us. The payment by check cannot be accepted unless otherwise agreed in the individual case.

## **V. Retention of title and Offset**

1. We are entitled to carry out or provide the outstanding deliveries or services only against prior payment or provision of security, if we become aware of circumstances, which have the potential to reduce the creditworthiness of a customer and by which the payment of our open claims of contractual relationships, including the other single order subject to the same contract will be compromised.

2. The offsetting with counter-claims of a customer or withholding of payments due to such claims is permissible only if counter-claims are undisputed or legally established.

## **VI. Delivery and Delivery period**

1. Unless otherwise agreed in writing, our deliveries are to be performed ex works.

2. Deadlines and dates of delivery specified by us apply only approximately unless a fixed deadline or a fixed date is expressly consented and agreed.

3. If shipping has been agreed, delivery dates and deadlines refer to the time of transfer to the forwarder, carrier, or other third party assigned to transport the goods.

4. The Customer can demand the prolongation of agreed lead times or postponement of delivery of goods or service by the period, when the customer does not fulfil necessary requirements as stipulated in the contract. Any further possible legal claims of the customer due to delayed delivery remain unaffected.

5. We do not take the responsibility if it becomes impossible to deliver in time so long as caused by force majeure or others that these unforeseeable circumstances such as breakdowns in business operations, difficulties in obtaining material or energy, delays caused by transit problems, lack of manpower, energy or raw material, difficulties in procuring necessary permits, non-delivery or overdue delivery by suppliers.

So long the circumstances make the delivery or services difficult or impossible to fulfill and where the hindrance is not only of temporary art, we are entitled to withdraw from the contract.

If the customer is a consumer in terms of paragraph 13 of the German Civil Code (BGB), we are entitled to withdraw from the contract, so that we shall inform the Customer without delay of this unavailability and reimburse any counter-performance.

In case of obstacles of a temporary duration, the deadlines for delivery or performance shall be extended or the delivery or performance dates shall be postponed by the period of obstruction plus an appropriate run-in period. Insofar it is not reasonable for a customer to accept the postponement of the delivery or service, he may withdraw from the contract by mean of an immediate written notification.

6. We retain the right to make partial delivery in case if
- the partial delivery can be used independently in the framework of contractual purpose for the customer.
  - the delivery of the remaining ordered goods is ensured and
  - the customer does not thereby becomes subject to significant substantial costs or additional expenditures (unless we declare our willingness to take over these expenses).

7. If we are late in supplying goods or services or if it becomes impossible to delivery, no matter on which ground, our liability for

# General Supply and Payment Conditions of Aerotechnik E. Siegwart GmbH, 66299 Friedrichsthal

damages will be limited in accordance with §10 of these General Supply and Payment Conditions.

## **VII. Place of Performance, Dispatch, Packaging, Transfer of risk**

1. Place of performance for all the contractual obligations is 66299 Friedrichsthal, unless otherwise agreed.
2. Unless otherwise agreed, the kind of transport and packing are subject to our obligatory discretion.
3. If the customer is a consumer in terms of paragraph 13 of the German Civil Code (BGB) the risk of accidental sinking, accidental damage or accidental lost of the delivered goods shall pass over to the customer at that point of time at which the goods are delivered to the customer or when he is in default in taking receipt of the goods.

In all other cases the risk shall pass over at the latest with the handover of the object of delivery (whereby the commencement of the loading process is decisive) to the forwarding agent, freight carrier or other third party specified that has been assigned with the task. This also applies in case of partial deliveries or we provide the other services (dispatch) as well.

Should shipment or handover be delayed to reasons attributable to the customer, the risk shall transfer to the customer on the day the goods are ready for delivery and we notify the customer on this.

4. The required storage costs after passing of risk shall be borne by the customer. By storage through us the weekly storage costs would be 0,25% of the invoice value of the delivery item.
5. As far as we are not to bear the risk of material damage, upon request of the customer and at his expense we shall insure the delivered objects against theft, breakage, transport, fire, water and other damages.

## **VIII. Retention of title**

1. We reserve title to all goods delivered by us until such the time as the therefor has been paid in full (including VAT and shipping costs).
2. If the customer is an entrepreneur in terms of paragraph 14 of the German Civil Code (BGB), a legal person under public law or a separate estate the following provisions apply:
  - 2.1. The customer shall keep such item in storage for us free of charge as long as the ownership title has not been transferred to him. Until the ownership title has been transferred, the customer is obliged to inform us in writing, if the objects of the sale is attached or is subject to other third party interference, so that we file a complaint according to §771 of ZPO. As far as the third party is not in a position to refund to us the judicial and extrajudicial costs for an action as in §771 of ZPO, the customer shall be liable for any loss we incur.
  - 2.2. The customer is entitled to sell the delivery goods in the proper course of business, however the customer shall already transfer to us in advance all the claims accruing from the resale of goods inclusive VAT against their buyer or the third party up to the sum of the final invoice irrespective of whether the goods were proceeded prior to the resale or not. The customer shall remain entitled to collect this account even after assignation. Our authorization to collect the receivables ourselves remains unaffected. However we are obliged not to collect the claims for as long as the customer duly meets its payment obligation and is not in default.

In case of the delay of payment we can demand that the later notify us of the assigned accounts receivable and their debtors, make all of the statements necessary for the collection of claims, surrender the relevant documents and inform his debtors (third parties) about the assignment.

- 2.3. The processing or alteration of the delivery objects is always carried out by the customer for us. If the delivered object is processed with other products not belonging to us, then we acquire the co-ownership on the new product in the ration of the value of the delivery object at the time of processing.
- 2.4. If the delivery object is blended with or mixed in with other products not belonging to us, then we acquire the co-ownership on the new product in the ration of the value of the other blended or mixed object at the time of blending or mixing. If the blending or mixture is carried out in a way that the customer's object is to be considered to be the main object, then it is hereby agreed, that the customer assigns us the proportionally co-ownership. The customer shall hold for us the sole ownership or co-ownership.
- 2.5. The customer shall also assign to us the claims arising against the third parties as a result of blending of the delivery object with the real estate to us to secure our claims against it.
- 2.6. We are entitled to relinquish ownership of the delivered items, as well as the debt claims, to the extent that the value exceeds the amount of secured claims by more than 50%. We shall be responsible for selecting which delivery objects to be released from the ownership.

## **IX. Warranty Rights and Limitation Period**

1. If our deliveries or performances contain a defect, we are obliged to remedy it.
2. This obligation to repair shall not be applied if the goods delivered by us show small cracks, irregularities, scratches, color deviations, zinc flowers or zinc crystals or similar appearances, and it has been proven that hereby not only the slight variations from the agreed quality is grounded, otherwise that is no deficiencies impairing the suitability for the use of the required by the contract, otherwise the common use. The assessment must be carried out, unless otherwise agreed between parties of the contract, under standard conditions, especially with viewing distance and the lighting conditions, later as standard use.
3. In case of the fault of subsequent performance according to §9.1, or if the customer is unreasonable or we deny the subsequent performance, the customer is entitled in accordance with legal regulations to withdraw the contract, to reduce the contracting price or to demand for reimbursement or replacement of his wasted expenditures. Besides the special provisions of §10 of these General Supply and Payment Conditions are valid for replacement claims of the customer.
4. The limitation period for defect claims of the customer is one year. This warranty time shall not apply for reimbursement of the customer from the damages of life, body or health or breaches of obligations committed intentionally or from gross negligence by ourselves or persons employed by us. Insomuch the legal limitation regulations are valid.
5. The defect claims shall not be accepted if the customer lets the delivery goods modify without our agreement or he allows the Third Party to carry out changes, thus making the correction of deficien-

# General Supply and Payment Conditions of Aerotechnik E. Siegwart GmbH, 66299 Friedrichsthal

cies impossible or unacceptably difficult. In any case the customer shall bear the additional costs of repair of the defect accruing as a result of alteration.

6. If the customer is an entrepreneur in terms of paragraph 14 of the German Civil Code (BGB), a legal person under public law or a separate estate under public law the following provisions apply:

6.1 The goods supplied by us have to be checked for defects immediately after delivery to the customer or determined third parties. They shall be deemed to be approved if we have not receive a written notice of the visible or other defects recognizable as a result of immediate thorough examination within seven calendar days of discovery of defects.

Regarding other defects, the delivery goods shall be deemed to be approved if we have not received a written notice within seven calendar days after the time at which defects have been discovered. However, if the defect was identified by the customer during normal usage before the closer examination, this earlier date shall be considered as the beginning of the warranty period of time.

Upon our request the complaint delivery goods are to be returned to us freight paid. If the complaint is justified, we will reimburse the costs of the cheapest shipping option; this does not apply if costs increase, because the object of the delivery is at the different location than that of the intended use.

6.2 In case of defects of goods or components of the other manufacturer which we cannot remediate because of licensing or factual reason, we can choose between making a claim for a compensation directly by manufacturer and supplier for the sum of the customer's invoice or ask the customer to do so. The warranty claims against us only exist under the other prerequisites and according with stipulations of these General Supply and Payment Conditions, if the court assertion of the aforementioned claims against the manufacturer and supplier has been unsuccessful or, for example, there is no reasonable chance due to insolvency. For the duration of legal dispute, the period of limitation relating to these warranty claims of the customer against us shall be barred.

6.3. If, in individual case, the delivery of used goods is agreed with the customer, such delivery shall not be subject to any warranty for material defects.

## **X. Compensation, Product Liability**

1. Regardless of the legal reasons, especially of impossibility, delay, partial or false delivery, violation of contractual obligations and from culpa in contrahendo, our liability for damages, in so far as it is at fault, shall be limited in accordance with the provisions set out below:

1.1. We do not accept the liability in case of ordinary negligence of our government bodies, statutory representatives, employees or other auxiliary persons, as long as these violations do not breach the contractual obligations. Essential are the contractual obligations for prompt supply of object of the delivery, which freedom from legal defects and such material defects, which affect more than just irrelevantly and other obligations whose breach puts the contract goal in risk.

1.2. So long as we are liable for compensation for damages in accordance with above mentioned §10. 1.1, our liability is restricted to damages, which we foresaw as possible consequences of an infringement of the contract or should have been known to us, when applying due to care and attention.

Indirect damage and follow-up damage, resulting of defects in the object of delivery, is apart from this, only eligible for compensation if such damage is to be typically expected, if the object of delivery is used in accordance with its intention.

These restrictions do not apply if the customer is a consumer in terms of paragraph 13 of the German Civil Code (BGB).

1.3 In case of liability for ordinary negligence, our compensation obligation of material defects and the resulting other damages to assets is limited to the amount of 250.000,00 € per case (according to current insurance cover of our general liability insurance), even if violation of major contractual obligations is involved.

2. The above cases of exclusion and limitation of liability apply to the same extent in favor of the government bodies, representatives, employees and other agents.

3. As far as we render technical information and act as an advisor and this information or advice is not part of the contractually agreed scope of services owned by us, this is done free of charge and with the exclusion of any liability.

4. The limitations under §10. 1-3 do not apply to our liability against willful conduct, for guaranteed characteristic of state of the products, damage to life, body or health or as per stipulations provided under the product liability act.

## **XI. Applicable Law, Place of Jurisdiction**

1. The contractual relationship between our contracting partner and us are only subject to the Law of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

2. If the customer is a merchant, a legal person or a special fund under public law or he has no general place of jurisdiction in the Federal Republic of Germany, so the exclusive place of venue for all disputes from the contractual relationships between the customer and us shall be our head office in 66299 Friedrichsthal. However we are also entitled to litigate at the seat of the customer. Any mandatory legal regulations about exclusive jurisdiction remain unaffected by this clause.

## **XII. Final Provisions**

In so far as the contract concluded between our contracting partner or these General Supply and Payment Conditions contain regulatory gaps, those legally effective provisions which the contracting partner would have agreed according to the commercial aim of the contract and the purpose of these General Supply and Payment Conditions, if they had been aware of the gaps, are considered to be agreed for filling these gaps.