



General Terms and Conditions of Elbe Flugzeugwerke GmbH for Sales abroad

1 Scope of Application

- 1.1 The general terms and conditions for sales contained herein (the "Terms") shall apply to all quotations and sales made by Elbe Flugzeugwerke GmbH, a Gesellschaft mit beschränkter Haftung (GmbH) created and existing under the laws of the Federal Republic of Germany, registered at the Local Court in Dresden, Germany, under the Company Registration No. HRB 1378, with its Head Office at Grenzstrasse 1, 01109 Dresden, Germany (hereinafter "EFW") concerning the products and services directly or indirectly supplied by EFW (the "Products" and "Services").
- 1.2 The validity of any customer (the "Customer") general terms and conditions, especially Customer's standard terms and conditions of purchase, is herewith expressly refuted.
- 1.3 Deviations from these Terms require the explicit written approval of EFW.

2 Offer and Acceptance

- 2.1 EFWs quotations are non-binding offers but must be seen as invitations to Customer to submit a binding offer. The provision of samples and specimens is for information purpose only and does not in any case constitute an offer.
- 2.2 The Products and/or Services shall be subject to due ordering (offering) by the Customer and order acceptance by EFW in writing. In case EFW's order acceptance differs from the offer of the Customer, such acceptance constitutes a new non-binding offer of EFW.
- 2.3 The Customer commits to order Products and/or Services amounting to a minimum order value of 250 EUR.

3 Documentation

Any documents such as pictures, drawings, details of weights and dimensions, calculations, etc. that EFW has transferred or made available to the Customer shall not be deemed to be a constituent part of the accepted order, unless it is expressly stated by EFW that they are included. EFW also reserves the right to make changes in the technical concept underlying the subject-matter of the relevant order, if this will not impair the quality and specification profile of the Products and/or Services defined in the order.

4 Prices

- 4.1 Prices and charges shall apply exclusively as quoted in EFW's order acceptance.

All prices shall be understood net and in accordance with the trade term agreed in the contract. Such trade term (hereinafter "Trade Term") shall be interpreted in accordance with the INCOTERMS in force on the date the contract is concluded. Prices are exclusive of any taxes or duties that may be levied in connection with the supply of Products or Services, and that shall be paid by the Customer.

- 4.2 Unless quoted as a fixed price for a specific period or agreed otherwise in writing, EFW may adjust all prices to the general cost trend (in particular to labour agreements, material and manufacturing costs alteration as well as significant exchange rate fluctuations).

5 Terms of payment

- 5.1 Payment shall be made no later than thirty (30) calendar days from the date of invoice. All payments shall be deemed to have been effected if and when they have been irrevocably credited for EFW's free disposal to EFW's bank account.
- 5.2 Failure to pay the purchase price by the due date causes the Customer to be in default without any further reminder by EFW.
- 5.3 If any payment due to EFW is not received on the due date, without prejudice to EFW's other rights at law, EFW shall be entitled:
 - a) to cease deliveries to the Customer until all outstanding and due payments arising under the business relationship have been effected, and
 - b) to claim default interest at the rate defined by law.
- 5.4 The Customer shall not be entitled to retain or set off payments due to EFW in respect of counterclaims except such claims are undisputed or legally valid. The Customer is entitled to exercise its retention rights only to the extent such rights are based on the same transaction.
- 5.5 If a substantial deterioration occurs in the financial circumstances of the Customer after the contract has been concluded or if circumstances become known to EFW that put at risk payment by Customer in total or in due time, EFW may, notwithstanding its other rights provided for by law, refuse to perform its obligations under the contract until full payment of due debts has been effected or Customer has provided sufficient security for debts not yet due.

6 Delivery

- 6.1 Delivery shall be effected as agreed in the contract. General Trade Terms shall be

interpreted in accordance with the INCOTERMS in force on the date the contract is concluded.

- 6.2 Unless otherwise agreed, the delivery shall be made "ex works" (EXW), Dresden.
- 6.3 EFW is entitled to make partial deliveries provided that this is reasonable for the Customer.

7 Lead Time

- 7.1 Lead times shall only be binding if they have been agreed to by EFW in writing.
- 7.2 Adherence to the lead time shall be subject to clarification of all commercial and technical questions by Parties and Customer having fulfilled in due time all its obligations under the contract. The delivery time will be extended – notwithstanding EFW's other rights due to delay of the Customer – by the specific period for which the Customer falls short of its obligations under the contract.
- 7.3 In the event of despatch being delayed at Customer's request, EFW will demand reimbursement of any expenses incurred. If the Products are stored at EFW's premises, the storage fee shall amount to 0,5% of the total purchase price per week of storage or part thereof, but in no case more than 5%. The Parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.
- 7.4 If EFW delays delivery, the Customer shall be entitled to claim liquidated damages for delayed delivery in so far as it can be proved that the delay has been caused through the fault of EFW and that the Customer has suffered a loss as a result of such delay.
The liquidated damages shall be 0,5% for each full week of delay, with a maximum liability of 5% of the purchase price corresponding to such part of the Products or Services in delay. EFW's liability shall be limited to compensation for typical, foreseeable damages.

Any further liability on the part of EFW on account of delay shall be excluded subject to the provisions in clause 13.1.
- 7.5 After reaching the maximum liquidated damages for delay in delivery, the Customer may rescind the contract only upon unsuccessful expiry of a period of time set to EFW to effect the delivery, provided that the obstruction is not temporary, the delay is unreasonable to the Customer and EFW is responsible for such delay.
In any event, exercising the right of rescission of the contract shall constitute a waiver by Customer of any claim for damages.

8 Transfer of Risk

- 8.1 The risk of loss or random deterioration will be transferred to the Customer corresponding to the agreed Trade Term.

- 8.2 In the event of delivery being delayed due to circumstances attributable to the Customer, the risk shall be transferred on the date of EFW's notification of the readiness for shipment respectively readiness for acceptance.

9 Receipt

Without prejudice to its rights under clause 11 of these Terms, the Customer shall take delivery, respectively acceptance, even if the Products and/or Services show minor deficiencies.

10 Retention of Title

- 10.1 The Products shall remain the property of EFW until paid for in full to the extent that such retention of property is valid under the law of the area where the Products are located. If retention of property is not valid under such law, EFW reserves and may exercise any other rights related to the Products as permitted by such law.
- 10.2 The Customer shall upon EFW's assist EFW in taking any measures necessary to protect EFW's title to the Products or any such other rights in the country concerned. In these cases the Customer shall not grant any pledge or lien or other right or transfer title in the Products to any third party. In the event that the Products are seized by any third party, or a pledge or lien is granted by court order to such third party, the Customer shall notify EFW thereof immediately.

11 Warranty

EFW shall be liable for defects of the Products and Services to the exclusion of any further claims notwithstanding however clause 13.1, as follows:

- 11.1 The Customer shall examine the supplied Products and Services immediately after delivery in order to identify any defects. The Customer shall notify EFW in writing within one (1) week of discovery by Customer of such apparent defect. If the Customer fails to provide notification within the exclusion period, the Products and Services shall be deemed to be approved and Customer thus waives its warranty rights hereunder.
- 11.2 In the event of a defect, EFW undertakes to first, at its option, repair or replace the defective Products or Services.
- 11.3 In AOG cases regarding PtoF Conversion Services Customer shall contact EFW's AOG desk:

AOG Desk PtoF

Fax: +49 (0) 351 8839-3282

Mobile: +49 (0) 171 5668474

E-Mail: aog.freighter.ptof@efw.eads.net

In the absence of a response to the AOG request within twelve (12) hours, the Customer shall be authorised to carry out the repair work to the converted Aircraft himself.

- 11.4 EFW will bear solely the costs necessary for the purpose of repair or replacement. Replaced Products become property of EFW.
- 11.5 EFW is entitled to refuse the repair or replacement according to the statutory rule. EFW may further refuse the repair or replacement if in spite of EFW's respective request the Customer fails to return the defective Products to EFW's premises within due time or the Customer fails to pay a reasonable proportion of the remuneration taking into account the defect.
- 11.6 The Customer may within the frame of its statutory rights define a reasonable period for EFW - subject to the statutory exceptions - to repair or replace the defective Products or Services and after effectual expiry of such period of time the Customer may rescind the contract. If however the defect is insignificant the Customer may only claim a reasonable reduction of price. In all other cases the right of the Customer for price reduction shall be excluded.
- 11.7 With regard to claims for compensation and reimbursement of expenses on a defect, clause 13.1 shall apply.
- 11.8 The Customer shall not be entitled to any rights as a result of defects that are due e.g. to nonconforming storage, operation, maintenance or excessive or inappropriate use of the subject-matter of the contract, by the use of unsuitable tooling and resources, improper changes, corrective maintenance work and damage to seals in the subject-matter of the contract or by other breach of contractual specifications and product regulations on the part of the Customer or a third party.
- 11.9 EFW shall not be liable for defects resulting from normal wear and tear. For Products delivered as used or outclassed the Customer shall have no warranty rights.
- 11.10 Warranty will be limited to those defects, which become apparent twelve (12) months after delivery to the Customer. For Products and Services which are found defective within such period and are replaced or repaired by EFW the warranty period shall be extended to twelve (12) months from the date of such repair or replacement. However, the warranty period so extended shall at the latest expire twelve (12) months after the original warranty period has expired.

12 Industrial Property Rights, Defects in Title

- 12.1 IN NO EVENT SHALL EFW BE LIABLE FOR INFRINGEMENT OF PATENTS OR ANY INDUSTRIAL OR INTELLECTUAL OR OTHER SIMILAR PROPRIETARY RIGHTS UNDER THESE TERMS.
- 12.2 Should other defects in title occur, clause 11 shall apply *mutatis mutandis*.

13 Limitation of Liability

- 13.1 ANY LIABILITY OF EFW TOWARDS THE CUSTOMER IN RELATION TO ANY OF THE SERVICES OR OTHERWISE UNDER THESE TERMS (WHETHER ARISING IN CONTRACT, TORT, DELICT OR OTHERWISE HOWSOEVER) SHALL BE LIMITED TO THE VALUE OF THE RESPECTIVE PRODUCT AND/OR SERVICE UNDER THE RELEVANT ORDER.
- 13.2 THE WARRANTIES, OBLIGATIONS AND LIABILITIES OF EFW AND/OR SUBCONTRACTORS AND REMEDIES OF THE CUSTOMER SET FORTH IN THIS TERMS ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND THE CUSTOMER HEREBY WAIVES, RELEASES AND RENOUNCES ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES OF EFW AND/OR ITS SUBCONTRACTORS AND RIGHTS, CLAIMS AND REMEDIES OF THE CUSTOMER AGAINST EFW, ITS SUBCONTRACTORS AND/OR THEIR INSURERS, EXPRESS OR IMPLIED HOWSOEVER, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY EFW PRODUCTS AND SERVICES DELIVERED UNDER THIS TERMS INCLUDING BUT NOT LIMITED TO: (A) ANY WARRANTY AGAINST HIDDEN DEFECTS; (B) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE (BESCHAFFENHEITSGARANTIE, §§ 443 and § 639 (BGB) GERMAN CIVIL CODE); (C) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; (D) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY, WHETHER CONTRACTUAL OR DELICTUAL AND WHETHER OR NOT ARISING FROM EFW'S AND/OR ITS SUBCONTRACTORS' NEGLIGENCE, ACTUAL OR IMPUTED; AND (E) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR LOSS OF OR DAMAGE TO ANY EFW PRODUCTS AND/OR SERVICES.
- 13.3 EFW SHALL HAVE NO OBLIGATION OR LIABILITY, HOWSOEVER ARISING, FOR LOSS OF USE, REVENUE OR PROFIT OR FOR ANY OTHER DIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WITH RESPECT TO ANY EFW PRODUCTS AND/OR SERVICES DELIVERED UNDER THESE TERMS.
- 13.4 NOTHING IN THESE TERMS SHALL LIMIT THE LIABILITY OF EFW FOR FRAUDULENT MISREPRESENTATION, WILLFUL MISCONDUCT, GROSS NEGLIGENCE OR FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE.

14 Indemnification

The Customer shall be solely liable for and shall indemnify and hold harmless EFW from and against all liabilities, claims, damages, costs and expenses (including legal expenses and attorney

fees) in respect of loss of or damage to the Customer's property and/or injury to or death of the directors, officers, agents or employees of the Customer and/or from and against all liabilities, claims, damages, costs and expenses incident thereto or incident to successfully establishing the right to indemnification (including legal expenses and attorney fees) for any loss or damage caused by the Customer to third parties arising out of, caused by or in any way connected with the use of any Services or Products of EFW.

15 Force Majeure

15.1 In cases of force majeure (such as but not limited to strike, legal lock-out, war, civil unrest, acts of terror, natural disasters, prohibitions on import and export, US-restrictions, shortage of energy and raw materials) and in all other circumstances (including late self-delivery) that are beyond EFW's control, even if such event occurs on the part of EFW's upstream supplier, and which make shipment impossible or unreasonably difficult for EFW, EFW shall be entitled to postpone the shipment for the duration of the event and a reasonable period for restart of its business activities and be freed from the obligation to deliver for such extended period.

15.2 If performance of EFW's obligations is suspended under this clause for more than one (1) month such period is to be understood as unreasonable and EFW may withdraw from the contract in whole or in part.

15.3 The Customer shall have no right to compensation in such event of Force Majeure.

16 Insurance

The Customer shall conclude and maintain adequate insurance policies to cover its liabilities under the respective contract with EFW. The Customer shall provide certificates of such insurances on request of EFW at any time.

17 Confidentiality

17.1 Any and all author rights, copyrights, industrial proprietary rights of whatever nature relating to quotations and cost estimates, as well as illustrations, drawings, calculations, brochures, catalogues, patterns, prototypes, tools or any other documentation or means provided by EFW under a binding order shall remain the property of EFW.

17.2 The Customer shall not make accessible or disclose to any third party, use itself or through any third party or copy the contents of any information or documentation provided by EFW under these Terms, in whole or in part, without the prior agreement of EFW, save as is obligatory pursuant to any governmental or legal requirement imposed on the Customer. In such event, the Customer having become aware of such a requirement shall inform EFW of its obligation to disclose if possible prior to such

disclosure. If EFW wishes to counter such requirement, the Customer shall assist it in doing so.

17.3 Upon reasonable written request of EFW, the Customer shall return or destroy and irretrievably delete any confidential information furnished to it by EFW and any copy made of it and give EFW written notice about such destruction and deletion.

18 Export Control

18.1 The Customer acknowledges that the Products and/or Services to be provided by EFW under these Terms may be subject to export control laws and regulations, and any supply or use of such Products and/or Services contrary to such laws and regulations is prohibited.

18.2 Customer shall indemnify and hold EFW harmless against any losses, damages, fees or monetary sanctions imposed on EFW as a result of Customer's failure to comply with any applicable export control law or regulation.

19 Severability

Should any of the above provisions be or become void, illegal or unenforceable, or should they contain a gap, the validity of the remaining provisions shall not be affected.

20 No Assignment

The Customer shall not assign, transfer or otherwise deal with any of its rights or obligations arising under its business relation to EFW (including the right to receive delivery) without the prior written consent of EFW.

21 Governing Law and Arbitration

21.1 All disputes arising out of or in connection with the transaction governed by this Terms which cannot be settled amicably, shall be finally and conclusively settled by an Arbitral Tribunal in accordance with the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

21.2 The Arbitral Tribunal shall base its decision on this Terms with resort to German law excepting its rules for the conflict of laws and United Nations Convention on Contracts for the International Sale of Goods (CISG).

21.3 The arbitration shall be held in Hamburg, Germany in the English language.