

General Purchase Conditions of Elbe Flugzeugwerke GmbH

1. Scope of applicability

- 1.1 These General Purchase Conditions shall apply to all deliveries and/or services purchased or acquired by Elbe Flugzeugwerke GmbH, Grenzstrasse 1, 01109 Dresden, Germany (hereinafter called "EFW") from the supplier of deliveries or service provider (hereinafter "Supplier").
- 1.2 Any general terms and conditions of the Supplier diverging from or supplementing these General Purchase Conditions shall not be binding on EFW, not even if not expressly objected to by EFW or when the Supplier announces that the performance of its duties under the contract is subject solely to its general terms and conditions of business.

2. Offer

- 2.1 Offers and price quotes shall not be remunerated and shall not create any obligations on the part of EFW.
- 2.2 The Supplier shall explicitly expose in its offer any discrepancies between its offer and EFW's inquiry and shall in addition to its offer corresponding to the inquiry also present to EFW any alternative which is technologically or economically superior.

3. Purchase Order, Acknowledgement of Order and Revocation

- 3.1 Purchase orders and other declarations of EFW shall only be binding if placed or confirmed in writing. Only the following shall be deemed part of the purchase order in the following order of precedence: the purchase order document, these General Purchase Conditions, and EFW's technical specifications and standards, if attached to or referred to in the purchase order.
- 3.2 For the purpose of accepting the purchase order and thus concluding the contract, the Supplier shall return the duly signed copy of the purchase order to EFW without undue delay, at the latest, however, one week after receipt of such purchase order. Receipt of acceptance in the above mentioned form is decisive for the expiry of the time-limit.
- 3.3 The acceptance of the purchase order shall include all significant order data, particularly the precise designation of the ordered deliveries and/or services, the order number, the order item as well as the date of the purchase order and of the delivery.
- 3.4 Amendments or addenda to the purchase order made by the Supplier shall only take effect if they have been confirmed by EFW in writing. The acceptance of deliveries or services as well as payments does not constitute such agreement.
- 3.5 If the Supplier fails to accept the purchase order from EFW in writing within a period of one week after receipt of the same, EFW shall be entitled to revoke the purchase order.

4. Subcontracting

The Supplier shall not sub-contract third parties (in particular subcontractors of any level) nor replace them without prior written consent of EFW. Supplier's non-compliance with this provision entitles EFW to rescind the contract all or in part and claim damages.

5. Prices

- 5.1 All prices of the Supplier shall be considered as being "delivered at place" (DAP, Incoterms 2010). They shall

include costs for packing, loading and freight forwarding, including any insurance costs for the transport of goods.

- 5.2 The agreed prices are fixed prices and any supplemental claims or increases in price are excluded.

6. Invoicing, Terms of Payment

- 6.1 As condition precedent for payment, demands for payment as well as invoices shall be submitted by Supplier to EFW in duplicate within three (3) months from performance of duties under the contract and must indicate all the information requested in the purchase order.
- 6.2 Payments by EFW shall be made by bank transfer within thirty (30) days upon completion of delivery or services and receipt of correctly issued invoice.
As far as the Supplier is required to provide material testing, test records or quality control documents or any other documentation, completion of delivery or services shall only be assumed to have taken place upon receipt of such documentation by EFW.
- 6.3 Each party shall bear the bank charges applied by its bank, respectively in its own country. For electronic remittance **SHARE** shall apply.
- 6.4 EFW is entitled to set-off or retention as well as defence of lack of performance of the contract to the full extent provided by applicable law. EFW is especially entitled to retain payment as long as it may claim performance or remedies for non-conformity.
- 6.5 The Supplier is entitled to set-off payments or retain its duties under the contract only if the claim is undisputed or has become res judicata.

7. Time of Performance, Delay, Liquidated Damages

- 7.1 The agreed time of performance shall be binding. Advance or late performances are permissible solely upon written consent of EFW.
- 7.2 Deliveries or rectification are considered timely when received at the delivery address specified by EFW or accepted in due course.
- 7.3 The Supplier shall immediately inform EFW if and as soon as it becomes evident that it will be unable to comply with the time of performance. In such cases EFW reserves the right to reject deliveries and/or services. Such notification shall not relieve the Supplier of its obligation of timely performance.
- 7.4 If the performance by Supplier is delayed, EFW shall be entitled to claim liquidated damages of 0.5 % of the order value for each week of delay or fraction thereof, however not exceeding the total cumulative and aggregate of 5 % of the contract value. EFW reserves the right to claim the full amount of damages in the event the amount of damage exceeds the total amount of the above liquidated damages. The Supplier shall nevertheless be free to provide evidence that EFW has suffered no or lower loss as a result of the delay.
- 7.5 The acceptance by EFW of a delayed performance shall by no means be deemed a waiver of any of EFW's rights, especially claims of compensation.
- 7.6 The right of EFW to claim liquidated damages and other damages is in addition to, and not in substitution of, any rights EFW may have at law and/or under the contract and is in addition to the right of EFW to rescind the contract.

8. Place of Performance

Unless otherwise indicated in the purchase order, the place of performance shall be EFW's place of business.

9. Partial Performance

The Supplier shall take the risk of procurement in the sense of § 276 BGB (German Civil Code). EFW is not obliged to accept partial performance.

If partial shipments have been agreed, Supplier shall indicate in the bill of delivery the outstanding quantity to be yet delivered.

10. Shipment, Packing

10.1 The Supplier shall pack and ship the deliveries duly and properly. All regulations relating to packing and shipment must be complied with. The Supplier shall be liable for all damages and losses suffered by EFW as a result of faulty or deficient packing.

10.2 Each consignment shall be accompanied by shipping documents, e.g. bill of delivery, packing slip, etc. Order numbers and other data specified by EFW in the purchase order must be quoted in all correspondence. EFW must be provided the delivery note latest on the day of shipment.

10.3 Any additionally incurred expenses due to non-observance of the provisions defined above shall be reimbursed by Supplier to EFW.

11. Passing of Risk, Acceptance

11.1 When deliveries do not involve assembly or installation, the risk will pass upon reception of the deliveries as agreed upon including all necessary documentation at the delivery address specified by EFW.

11.2 For deliveries involving assembly or installation and for services, the risk will pass when the goods or services are accepted on site as agreed. Unless otherwise agreed, acceptance will, to the exclusion of § 640 1st sub-para, 3rd sentence and § 641a of the German Civil Code (BGB), require EFW's signing of an acceptance protocol. A mere reference to Incoterms clauses – be it made in the purchase order or anywhere else – shall in no event be construed as otherwise agreed.

11.3 EFW's costs for unavailing acceptance efforts of EFW shall be borne by Supplier if such failure was due to Supplier's default.

11.4 In the event of defects that are not substantial, provisional acceptance may be granted at the sole discretion of EFW, subject to the provision that such defects are remedied within a reasonable period as determined by EFW.

12. Warranties

12.1 The Supplier warrants that the deliveries and services will be free from defects as to quality or title, i.e. in particular will conform to the description contained in the purchase order, meet all properties and performances specified and be fully and safely operable for the purpose intended, conform to the latest accepted state of the art and economic efficiency and comply with the relevant technical documents, regulations, recommendations and guidelines.

12.2 The warranty period shall be three (3) years unless a longer expiration period is prescribed by law. The warranty period begins to run with the passing of risk (see article 11). Upon delivery to locations where EFW is operating outside its premises, the warranty period begins with the acceptance by the end customer of EFW, in no case later than one year after passing of risk.

12.3 EFW will notify in writing the Supplier of defects within ten (10) days following delivery if these are identified during the normal course of business activities. Any defects

discovered at a later point in time will be notified within ten (10) days following their discovery.

12.4 Should any defects occur during the warranty period, EFW shall be entitled to claim rectification of such defects according to applicable law. The type of rectification shall be at EFW's sole discretion.

12.5 Place of performance of the rectification shall be at EFW's sole discretion either the place of destination, respectively the place of acceptance, if acceptance is required by law or contractually agreed, or any other location if this was known to the Supplier upon contract signature. The Supplier must execute rectification also in all other respects in absolute accordance with EFW's operational interests.

12.6 In all the cases specified above, the Supplier shall not be entitled to make the rectification subject to partial or complete payment of the contractually agreed price. The Supplier shall bear the expenses necessary for rectification, in particular expenses for transport, travel, work and materials.

12.7 If rectification has failed or does not take place within a reasonable period of time specified by EFW or rectification is not reasonably acceptable to EFW, EFW shall, in addition to its rights according to Article 12.4, be entitled to rectify such defects itself or have a third party perform the rectification and Supplier shall reimburse all costs incurred by EFW. Additional or any statutory rights are not affected hereby.

12.8 In the event that EFW has a particular interest in immediate rectification due to threatening liability of its own for delay or for other reasons of urgency and a notice to the Supplier specifying a reasonable period of time for rectification appears unreasonable to EFW, EFW shall, without incurring any liability whatsoever, have the right to immediately exercise its rights under article 12.7 above.

12.9 EFW's rights under warranty shall not be deemed waived except by specific written notice signed by the duly authorised representatives of EFW.

13. Product Liability

13.1 The Supplier shall carry out a thorough examination for defects and shall furthermore do everything in his power to avoid product liability. If a claim is made against EFW as a result of product defect and if the defect is due in whole or in part to defects in the product purchased from the Supplier, the Supplier shall, at EFW's discretion, indemnify and hold EFW harmless from claims arising under the Product Liability instead of compensating all damages and losses suffered by the latter. The obligation of the Supplier to pay compensation for damages also comprises the costs of precautionary recall actions taken out of the necessity to prevent losses. The Supplier shall take out reasonable insurance to cover the risk of such losses.

13.2 The period of limitation for EFW's right of recourse according to article 13.1 above shall be three years and begin according to § 199 1st sub-para German Civil Code (BGB).

14. Third Parties Property Rights

The Supplier assumes the responsibility to ensure that the deliveries and/or services and the use thereof by EFW pursuant to the contract will not infringe any patent laws, copyright or other proprietary rights of third parties.

Without prejudice to the rights EFW may have at law and/under the contract, Supplier shall indemnify and hold EFW harmless from and against any claims made by third parties, by reason of defective title if such infringement is based on the culpable violation of obligations by the Supplier. In the event of legal defence against false claims made by third parties, EFW shall provide the Supplier with

reasonable support and the Supplier shall bear all the costs and expenses incurred hereunder.

15. Additional Obligations, Breach of Obligations

- 15.1 Provided that EFW has informed the Supplier about the intended use of the deliveries and services, or that such use is apparent to the Supplier even without any express advice, the Supplier shall inform EFW immediately if the deliveries and services provided by the Supplier are not suitable for such intended use.
- 15.2 Regardless of any warranty period, the Supplier shall inform EFW promptly in writing of any defects in Supplier's deliveries and services. For the avoidance of any doubts, this obligation also applies to any defects identified by the Supplier after shipment.
- 15.3 EFW must be informed promptly in writing of any circumstances jeopardizing compliance with the agreed time of performance with the objective of implementing further action.
- 15.4 The Supplier shall immediately notify EFW in writing of any changes or modifications in the composition of the materials used or in the engineering design if different from similar or comparable deliveries and services provided previously by the Supplier to EFW. Any such changes or modifications require prior written consent of EFW.
- 15.5 The Supplier shall ensure that the deliveries and services comply with all applicable environmental-protection, accident-prevention and other industrial safety regulations, as well as with the safety rules and all the generally accepted statutory regulations prevailing in the Federal Republic of Germany. The Supplier shall for each shipment advise EFW of any specific treatment and waste disposal requirements, unless these are generally known within the public domain.
- 15.6 In the event the Supplier breaches or fails to comply with any of its obligations under this General Purchase Conditions or the contract, EFW shall have the right to claim damages (including consequential damages) and/or other remedies pertaining to the protective scope of the breached obligation.

16. Aviation Law Requirements

- 16.1 Supplier shall meet all quality requirements advised by EFW including, but not limited to, requested certificates and – as the case may be – recommended manufacturer.
- 16.2 In the event of a delivery of materials or parts that are subject to an expiry date, Supplier shall clearly indicate to EFW the expiry date or the manufacturing date including the remaining product life time at the moment of delivery to EFW.
- 16.3 EFW will under no circumstances accept the delivery of materials or parts if these materials or parts, the Supplier or one of the Supplier's contractors or agents have been suspected by an aviation authority in terms of the "Suspected Unapproved Parts"-program or otherwise do not meet the effective aviation standards and rules. The Supplier shall by all means prevent counterfeit or suspected counterfeit part use and their inclusion in products delivered to EFW.
- 16.4 Supplier shall ensure that all its employees are aware of their contribution to product or service conformity, their contribution to product safety and the importance of ethical behaviour. Supplier shall commit its suppliers and subcontractors to ensure such awareness of their own employees.
- 16.5 In the event the Supplier is acting as subcontractor of EFW, the Supplier shall grant access to EFW, EFW's customers and appropriate authorities including, but not limited to, aviation authorities to all facilities and quality records relevant to the contract.

- 16.6 In cases defined by article 16.4 above, the Supplier shall acknowledge all requirements stipulated by EFW's customers concerning the subcontractors – including, but not limited to, their authorization to audit such subcontractors – and to pass on to its subcontractors all such requirements together with all requirements quoted in the purchase order. If expressly requested in the purchase order, the above mentioned shall also apply for the relevant quality and performance features.

17. Buyer Furnished Equipment

- 17.1 EFW shall retain ownership of, and any industrial or intellectual property rights as to any documents and other items furnished by EFW to the Supplier. They must be used exclusively for the provision of ordered deliveries or services. Any materials entrusted to the Supplier shall be insured by Supplier against loss and deterioration. There is no right of retention granted to Supplier with respect to materials belonging to EFW.
- 17.2 To the extent that any of the items provided by EFW are processed, converted or transformed by the Supplier to form a new chattel, EFW shall be deemed to be the manufacturer. If an item is combined with or inseparably integrated in other objects, EFW shall acquire a joint title and ownership in the said objects in the ratio of the value that the items provided had at the time of combination or integration. If the items are combined or integrated in such a manner that the Supplier's property shall be regarded as the primary product, it is understood and agreed that the Supplier assigns and transfers to EFW a prorated interest in a joint title to such products. The Supplier shall hold the products subject to joint ownership in trust on behalf of EFW free of charge.
- 17.3 EFW furnished items which are not processed, converted, transformed or otherwise assembled by Supplier as well as documentation provided by EFW shall be returned by Supplier to EFW upon termination of contract without further request.
- 17.4 The Supplier shall, at its own expense, perform any necessary maintenance and inspection work on the EFW furnished items and shall further take out adequate insurance cover for the same. Proof of such insurance cover must be furnished to EFW on request.

18. Spare Parts and their Availability

- 18.1 The Supplier shall for the period of the average useful life, however, at least for ten (10) years after the final consignment supply EFW with spare parts at reasonable prices based on the conditions of the purchase order.
- 18.2 If the Supplier ceases to deliver such goods after or before expiry of the period stated in article 18.1 above, Supplier shall give EFW the opportunity to place a final order.

19. Compliance

The Supplier shall comply with all applicable laws and regulations including but not limited to those dealing with labour, health, safety and environment. Furthermore the Supplier shall not engage, neither actively nor passively, neither directly nor indirectly in any form of bribery or corruption or any violation of human rights of its employees or any child labor. The Supplier shall use best efforts to support and ensure compliance of its suppliers and subcontractors with these compliance provisions.

20. Official Authorisations – Export Licences

- 20.1 The Supplier shall upon contract signature and/or receipt of purchase order indicate any part of the item referred to in the purchase order which is subject to export or re-export regulations. The Supplier shall promptly inform EFW about any change in such export or re-export regulations.

The Supplier shall also provide EFW with all information concerning such applicable export regulations, the harmonized tariff number, the country of origin as well as all necessary information for the classification of the items according to the harmonized system of the foreign trade statistics. The Supplier shall upon request assist EFW with the compliance with such applicable export or re-export regulations. The executed "Export Form" as attached to the purchase order is part of the order and/or the contract.

- 20.2 Whenever all or part of the items is subject to export or re-export regulations, the Supplier shall:
- be responsible for obtaining in time, bearing the costs itself for all relevant official approvals, licenses and authorizations required for the export, delivery of the item to EFW (including the worldwide operation of the item by EFW, its customer or end-user in accordance with the purchase order, the contract or the intended final use);
 - for each ordered item quote on all bills of delivery as well as on invoices the export control classification number, the number of the applicable export license (ECCN, EAR, ITAR), the harmonized tariff number (HS-Code) and the country of origin;
 - provide EFW with the copy of the export license certificate including the provisos except for the classified parts necessary for re-export purposes.
- 20.3 In the event that any export regulation would prevent the Supplier from performing (in time or at all) its duties under the purchase order or contract, EFW shall, in addition to all other rights it may have at law or under the contract, be entitled to cancel the purchase order – if not yet accepted - or withdraw from the contract.
- 20.4 The Supplier shall be liable for all damages, losses and liabilities incurred by EFW as a result of Supplier's non-compliance with its obligations under this article 20.

21. Reservation Clause

EFW shall not be obliged to fulfil its obligations under the contract if such fulfilment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions, unless EFW was or should have been aware of these obstacles upon conclusion of the contract.

22. Rescission, Termination

- 22.1 In the event of cancellation or reduction of EFW customer's orders or contracts in progress or if EFW's customer is persistently or temporarily detained from accepting deliveries and/or services or EFW's customer ceases payment or is suspected to cease payment, then EFW shall be entitled to rescind the contract with its Supplier all or in part or to terminate the contract.
- 22.2 EFW shall be entitled to terminate the contract for good cause at any time. Good cause shall be deemed to have shown if:
- the Supplier breaches an obligation under the contract and does not remedy the breach within a reasonable period of time as set by EFW in a written notice including a threat of termination, or EFW's reminder were without success or
 - the Supplier ceases paying its debts as they fall due, an provisional liquidator has been appointed or insolvency proceedings have been filed for or opened.
- In the above mentioned cases EFW may use already available facilities or deliveries necessary for continuation of business and in return pay reasonable compensation therefore to the Supplier.
- 22.3 EFW's rights under this article 22 shall be without prejudice to EFW's further rights at law concerning termination, termination for good cause or rescission.

23. Liability, Insurance

- 23.1 Except as otherwise provided in these General Purchase Conditions, the Supplier shall be liable according to the statutory provisions.
- 23.2 The Supplier shall at its own expense maintain sufficient liability insurance for damage for which it or its performing agents or vicarious agents are responsible. The Supplier shall provide EFW upon request evidence of the insurance coverage per occurrence. Supplier's contractual and legal liability remains unaffected by the extent and amount of its insurance coverage.

24. Confidentiality, Publicity

- 24.1 The Supplier shall keep secret and confidential any commercial and technical information and documents that are not generally known in the public domain and which have been disclosed in the course of the business relationship. The Supplier shall use such information and documents exclusively for the provision of the ordered deliveries and/or services. Any subcontractors shall agree to such confidentiality terms in writing.
- 24.2 Any quotation of the corporate name or trademarks of EFW in advertising material, references, credentials or other publications of the Supplier need the prior written consent of EFW.

25. Assignment

The Supplier may not assign any of its right or obligations under the contract to any third party without the prior written consent of EFW. The provisions of § 354a of the German Commercial Code ("HGB") remain unaffected hereby.

26. Applicable Law, Jurisdiction, Written Agreement, Severability

- 26.1 All legal relations EFW might have with its Suppliers shall be governed exclusively by the laws of the Federal Republic of Germany, excluding however, its provisions for the conflicts of law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 26.2 The exclusive place of jurisdiction for all disputes arising out of or in connection with the business relationship shall be Dresden.
- 26.3 Any amendments to the contract and supplementary agreements must be made in writing. This provision shall also apply to any waiver of this requirement for the written form.
- 26.4 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.

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