

# General Terms and Conditions of Purchase of FAUDI Aviation GmbH



## Article 1 Scope, Form

(1) These General Terms and Conditions of Purchase apply to all business relationships with our business partners and suppliers ("Sellers"). The GTC shall only apply if the Seller is an entrepreneur (Section 14 of the BGB (German Civil Code)), a legal entity under public law or a special fund under public law.

(2) The GTC shall apply in particular to contracts for the sale and/or delivery of movable items ("goods"), irrespective of whether the Seller manufactures the goods itself or purchases them from external suppliers (Sections 433, 650 BGB). Unless otherwise agreed, the GTC in the version valid at the time of the Purchaser's order or, at all events, in the version most recently communicated to it in text form, shall also apply as a framework agreement for similar future contracts, without our having to refer to them again in each individual case.

(3) These GTC shall apply exclusively. Any deviating, conflicting or supplementary General Terms and Conditions of Business of the Seller shall only become part of the contract if and insofar as we have expressly agreed to their validity in writing. This consent requirement shall apply in all cases, for example even if we accept the Seller's deliveries without reservation in the knowledge of the Seller's General Terms and Conditions of Business.

(4) Individual agreements concluded in specific cases with the Seller (including subsidiary agreements, supplements and amendments) shall take precedence over these GTC in all cases. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the contents of such agreements.

(5) Legally relevant declarations and notifications of the Seller with regard to the contract (e.g. the setting of a deadline, reminders, withdrawal) must be submitted in written or text form (e.g. a letter, email, fax). Statutory formal requirements and further forms of

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documentary evidence, particularly in cases of doubt about the legitimacy of the declarant, shall remain unaffected.

(6) References to the validity of statutory provisions shall only be provided for the purposes of clarification. Even without such clarification the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTC.

## **Article 2 Conclusion of the Contract**

(1) Our order shall be deemed to be binding at the earliest upon written submission or upon submission in text form (e.g. by email) if no written form is required by law. The Seller shall notify us of obvious errors (e.g. typing and calculation errors) and incomplete aspects of the order, including the order documents, for the purposes of correction or completion prior to acceptance; otherwise the contract shall be deemed not to have been concluded.

(2) The Seller is obliged to confirm our order within a period of five days – at least in text form (e.g. by email) – or in particular to execute it without reservation by dispatching the goods (acceptance). Delayed acceptance shall be considered to be a new offer and shall require acceptance on our part.

## **Article 3 Delivery Time and Delay in Delivery**

(1) The delivery time stated by us in the order is binding. If the delivery time is not specified in the order and has not been otherwise agreed upon, it shall be four weeks from the conclusion of the contract. The Seller is obliged to inform us immediately in writing if it is likely to be unable to meet agreed delivery times – for whatever reasons.

(2) If the Seller does not perform its services, does not perform them within the agreed delivery period or if it is in default, our rights – in particular to withdrawal and compensation

– shall be determined in accordance with the statutory provisions. The provisions in paragraph 3 remain unaffected.

(3) If the Seller is in default, we may – in addition to further statutory claims – demand lump-sum compensation for the damage suffered by us due to default in the amount of 1% of the net price per completed calendar week, but not more than 5% overall of the net price of the goods delivered late. We reserve the right to show that a greater level of damages has occurred. The Seller reserves the right to prove that no damages at all – or only a considerably lower level of damages – has occurred.

## **Article 4 Performance, Delivery, Transfer of Risk, Default of Acceptance**

(1) Without our prior written consent, the Seller shall not be entitled to have the performance owed by the Seller rendered by third parties (e.g. sub-contractors). The Seller shall bear the procurement risk for its services unless otherwise agreed in the individual case (e.g. restriction to stocks).

(2) Within Germany, delivery shall be carried out "free domicile" to the location specified in the order. If the destination is not specified and nothing else has been agreed, delivery shall be affected to our registered office at Scharnhorststrasse 7B, 35260 Stadtallendorf, Germany. The delivery times are exclusively Monday to Thursday in the period from 7:30 am to 3:00 pm. The respective destination is also the place of performance for the delivery and any subsequent performance (obligation to be performed at the place of performance).

(3) The delivery shall be accompanied by a delivery note stating the date (of issue and dispatch), the contents of the delivery (article number and quantity) and our order identifier (date and number). If the delivery note is missing or incomplete, we shall not be responsible for any delays in processing and payment of the invoice resulting from this. Separately from the delivery note, a corresponding dispatch note with the same contents is to be sent to us.

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(4) The risk of accidental loss and accidental deterioration of the item shall pass to us upon handover at the place of performance. If acceptance has been agreed, this shall be decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services shall also apply accordingly in the case of acceptance. If we are in default of acceptance, this shall be deemed equivalent to handover or acceptance.

(5) The statutory provisions shall apply to the occurrence of our default of acceptance. However, the Seller must also expressly offer us its service even if a specified or specifiable calendar period has been agreed for an action or cooperation on our part (e.g. provision of material). If we are in default of acceptance, the Seller may demand compensation for its additional expenses in accordance with the statutory provisions (Section 304 BGB). If the contract relates to an unacceptable item to be manufactured by the Seller (individual production), the Seller shall only be entitled to further rights if we are obliged to cooperate and are responsible for the failure to cooperate.

## Article 5 Prices and Terms of Payment

(1) The price stated in the order is binding. All prices are stated inclusive of statutory value added tax, unless this is shown separately.

(2) Unless otherwise agreed in the individual case, the price includes all services and ancillary services of the Seller (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and third-party liability insurance).

(3) The agreed price shall be due for payment within 30 calendar days from the time of complete delivery and performance (including any agreed acceptance) and after the receipt of a proper invoice. If we make payment within 14 calendar days from the date of receipt of a proper invoice at our premises, the Seller shall grant us a 3% discount on the net amount of the invoice.

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In the case of a bank transfer, payment shall be deemed to have been made on time if our bank receives our remittance order before the expiry of the payment deadline; we shall not be responsible for delays caused by the banks involved in the payment transaction.

(4) We shall not be liable for any interest payable after the due date. The statutory provisions shall apply to default in payment.

(5) We are entitled to rights of set-off and retention as well as the defence of non-performance of the contract to the extent permitted by law. In particular, we shall be entitled to withhold due payments for as long as we are still entitled to claims for incomplete or defective services against the Seller.

(6) The Seller shall have a right of set-off or retention only in the case of counterclaims which have been legally established or which are undisputed.

## Article 6 Confidentiality and Retention of Title

(1) We reserve the ownership rights and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents shall be used exclusively for the contractual services and shall be returned to us after the completion of the contract. The documents are to be kept secret from third parties, including after termination of the contract. The obligation of secrecy shall only expire if and to the extent that the knowledge contained in the documents provided has become generally known.

(2) The above provision shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items which we provide to the Seller for production. For as long as they are not processed, such items are to be stored separately at the Seller's expense and insured to an appropriate extent against destruction and loss.

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(3) Any processing, mixing or combining (further processing) of provided items by the Seller shall be carried out on our behalf. The above shall also apply if the delivered goods are further processed by us such that we are considered to be the manufacturer and acquire ownership of the product at the time of further processing at the latest in accordance with the statutory provisions.

(4) The transfer of ownership of the goods to us must take place unconditionally and regardless of the payment of the price. If, however, we accept an offer of transfer of title from the Seller in individual cases which is conditional on the payment of the purchase price, the Seller's retention of title shall expire at the latest upon payment of the purchase price for the delivered goods. In the ordinary course of business – and even before payment of the purchase price – we shall remain authorised to resell the goods with advance assignment of the resulting claim (alternatively, validity of the simple retention of title extended to resale). All other forms of retention of title are therefore excluded in any case – in particular the extended and forwarded retention of title and the retention of title extended to cover further processing.

## Article 7 Defective Delivery

(1) The statutory provisions shall apply to our rights in the event of material defects and defects of title of the goods (including incorrect and short delivery, as well as improper assembly, incorrect assembly, operating or instruction manuals) and in the event of other breaches of duty by the Seller, unless otherwise provided for below.

(2) According to the statutory provisions, the Seller shall be liable in particular for ensuring that the goods have the agreed properties at the time of the transfer of risk to us. At any event, the product descriptions which are the subject matter of the respective contract or which have been incorporated into the contract in the same manner as these GTC – in particular by being designated or referred to in our order – shall be deemed to be an agreement on their properties. It is irrelevant whether the product description comes from us, the Seller or the manufacturer.

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(3) We shall not be obliged to inspect the goods or carry out any special investigations into any defects at the time of conclusion of the contract. In partial deviation from Section 442, para. 1(2) BGB, we are therefore entitled to submit claims for defects without restriction even if the defect remained unknown to us at the time of the conclusion of the contract due to gross negligence.

(4) The statutory provisions (Sections 377, 381 HGB) shall apply to the commercial duty of inspection and notification of defects, with the following proviso: Our obligation to carry out an inspection shall be limited to defects which become apparent during our incoming goods inspection with an external examination, including the delivery documents (e.g. transport damage, incorrect and short delivery) or which are identifiable during our quality control by means of random sampling. Insofar as acceptance has been agreed, there shall be no obligation to carry out an inspection. Otherwise, this shall depend on the extent to which an examination is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our duty to give notice of defects discovered at a later time remains unaffected. Without prejudice to our obligation to carry out an inspection, our complaint (notification of defects) shall in all cases be deemed to have been submitted immediately and punctually if it is sent within 5 working days of discovery of the defect or, in the case of obvious defects, of delivery.

(5) Subsequent performance shall also include the removal of the defective goods and their re-installation, provided that the goods have been installed in or attached to another item in accordance with their type and intended use; our statutory claim to reimbursement of the corresponding expenses shall remain unaffected. The Seller shall bear the expenses required for the purposes of inspection and subsequent performance even if it turns out that there was no actual defect. Our liability for damages in the event of unjustified requests for defects to be remedied remains unaffected; however, in this respect we shall only be liable if we have recognised – or failed to recognise due to gross negligence – that there was no defect.

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(6) Without prejudice to our statutory rights and the provisions in paragraph 5, the following shall apply: Insofar as the Seller does not fulfil its obligation to provide subsequent performance – at our discretion either by remedying the defect (rectification of defects) or by delivering a defect-free item (replacement delivery) – within a reasonable period of time set by us, we may remedy the defect ourselves and demand compensation from the Seller for the expenses required for this or a corresponding advance payment. If the subsequent performance by the Seller has failed or is unreasonable for us to accept (e.g. due to particular urgency, endangerment of operational safety or the impending occurrence of disproportionate damage), no deadline need be set; we shall inform the Seller of such circumstances without delay, if possible in advance.

(7) Otherwise, in the event of a material defect or defect of title, we shall be entitled to reduce the purchase price or withdraw from the contract in accordance with the statutory provisions. Furthermore, we shall be entitled to claim damages and the reimbursement of our expenses in accordance with the statutory provisions.

## Article 8 Supplier Recourse

(1) In addition to the claims for defects, we are entitled without restriction to assert our legally stipulated rights of recourse within a supply chain (supplier recourse according to Sections 445a, 445b, 478 BGB). In particular, we are entitled to demand exactly the type of subsequent performance (rectification of defects or replacement delivery) from the Seller that we owe to our customer in the individual case. Our statutory right to choose (Section 439 para. 1 BGB) shall not be restricted by this.

(2) Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses in accordance with Sections 445a, para. 1, 439, para. 2 and 3 BGB), we shall notify the Seller and request an official written opinion by submitting giving a brief description of the facts. If a substantiated official opinion is not submitted within a reasonable period of time and no amicable solution is brought about, the claim



for defects that is actually conceded by us shall be deemed to be owed to our customer. In this case, the Seller shall be responsible for providing proof to the contrary.

(3) Our claims arising from supplier recourse shall also apply if the defective goods have been further processed by us or another company, e.g. by incorporation into another product.

### **Article 9 Producer Liability**

(1) Insofar as the Seller is responsible for product damage, it shall indemnify us in this respect from third-party claims to the extent that the cause lies within its sphere of control and organisation and the Seller is itself liable in the external relationship.

(2) Within the scope of its indemnity obligation, the Seller shall reimburse expenses pursuant to Sections 683, 670 BGB (German Civil Code) which arise from or in connection with a third-party claim, including recall actions carried out by us. We shall inform the Seller about the content and extent of recall measures – insofar as this is possible and reasonable – and provide the Seller with the opportunity to comment. Further legal claims shall remain unaffected.

(3) The Seller shall conclude and maintain product liability insurance with a lump sum coverage amount of at least EUR 100 million per case of personal injury/property damage.

### **Article 10 Limitation Period**

(1) The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions unless otherwise specified below.

(2) Contrary to Section 438, para. 1(3) BGB (German Civil Code), the general limitation period for claims for defects is 3 years from the time of the transfer of risk. Insofar as

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acceptance has been agreed, the limitation period shall begin upon acceptance. The 3-year limitation period shall also apply accordingly to claims arising from defects of title, whereby the statutory limitation period for claims in rem of third parties for the surrender of property (Section 438, para. 1(1) BGB) shall remain unaffected; furthermore, claims arising from defects of title shall in no case become statute-barred for as long as the third party can still assert the right – in particular in the absence of a period of limitation – against us.

(3) The limitation periods under sales law, including the above extension, shall apply – to the extent permitted by law – to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (Sections 195, 199 BGB) shall apply here, unless the application of the limitation periods under sales law results in a longer limitation period in an individual case.

## Article 11 Choice of Law and Place of Jurisdiction

(1) These GTC and the contractual relationship between us and the Seller are governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Seller is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising from the contractual relationship shall be our registered office in Stadtallendorf. The same applies if the Seller is an entrepreneur within the meaning of Section 14 BGB. In all cases, however, we shall also be entitled to take legal action at the place of performance of the delivery obligation in accordance with these GTC or a prior individual agreement or at the general place of jurisdiction of the Seller. Priority statutory provisions, in particular those concerning exclusive jurisdiction, shall remain unaffected.

These GTC are correct as of: Stadtallendorf September 2020

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