

# Continental Aerospace Technologies GmbH – General Terms of Purchasing

## 1. General, Scope of Application

- (1) Our contract partners shall be hereinafter referred to as "Suppliers", irrespective of the name they are given in the respective contract in a juristic sense.
- (2) Unless otherwise agreed, these General Terms of Purchasing ("GTP") shall apply exclusively to all our orders at business operators, legal persons under public law or special funds under public law, including those placed in the future. They are an integral part of any contracts concluded by us as "Buyer", "Orderer" or "Client". Any alternatively worded terms and conditions of the Supplier shall be hereby opposed. The latter shall only apply if we expressly confirm them in writing. Our GTP shall also apply if we accept deliveries of goods or services (hereinafter referred to as "Subject of the Contract") or pay for them in the knowledge that the terms of the Supplier conflict with or differ from our GTP. Any changes to our GTP will be communicated to the Supplier without undue delay.
- (3) Should special terms and conditions be agreed for specific orders/contracts, the GTP shall be subordinated to a supplementary basis.

## 2. Offer

The offers submitted to us must correspond to our enquiries. They shall be free of charge and without obligation. Should any offers submitted differ from our enquiries in any way, this should be especially pointed out to us in writing; the latter also applies if the Supplier determines that our enquiry is defective, incomplete and/or unclear.

## 3. Order, Conclusion of Contract

- (1) Orders and transactions release orders (together "Orders") and other conclusion of a contract as well as any changes or supplements thereto must be in writing. Orders may also be effected by long-distance data transfer or by fax. Our order and its specification shall also include all information furnished in the order itself with respect to the subject of the contract as well as the information contained in the appendices listed in the order, such as, for example, drawings, CAD data, etc., and all standards, of whatever kind, which are listed with valid documents or mentioned, and the required documents and tests. Should the Supplier determine that our order is defective, incomplete and/or unclear, the Supplier must inform us accordingly in writing immediately after ascertainment.
- (2) The orders we make shall be valid – unless we request written confirmation in the order – in all parts, if we do not receive any written notification from the Supplier to the contrary within 10 working days after the order date or – should we request written confirmation – if the order is confirmed in writing. Such a confirmation is equivalent to the issue of an invoice. Release orders shall be binding if the Supplier does not oppose them within 5 working days after receipt.
- (3) The Supplier must expressly inform us of any differing acceptance of our offer. In this case the contract shall only come about upon our written acceptance.

## 4. Changes to the scope of the order/contract contents

We shall be entitled after conclusion of the contract – but only up until delivery, to demand that modifications or corrections be made with respect to the volume of services or the method of execution regarding a part to be specially produced for us, but only up until manufacture – within the bounds of what is reasonable for the Supplier. Such modifications or corrections, in particular those which are requested by us on the grounds of technical progress, shall be included in the price insofar as they can be implemented without any significant expense being incurred by the Supplier.

## 5. Transfer to Third Parties, Status of Sub-Contractors

The Supplier may neither wholly nor partially transfers the fulfilment of accepted contractual obligations to third parties without our prior written consent. Should consent be granted, the Supplier shall be fully responsible for

fulfilling the contract. Sub-contractors are deemed vicarious agents of the Supplier in accordance with § 278 BGB (German Civil Code) and must be identified to us on request.

## **6. Prices**

Prices shall be fixed prices, unless otherwise agreed, and shall include everything the Supplier has to effectuate to meet its delivery and performance obligation at the agreed receiving station, including packaging and carriage. VAT is not included.

## **7. Quality of Goods, Performance Inclusion**

- (1) The Supplier shall guarantee top quality in terms of materials and execution for its contractual performance according to the recognised rules of technology and compliance with our guidelines and the product specifications surrendered by us, such as, for example: drawings, CAD data. It shall guarantee that the delivery or performance has the promised attributes and the necessary quality, meets the recognised rules of technology, conforms to the effective statutory requirements and does not contain any defects; it shall carry out a detailed functional and quality inspection prior to delivery and sufficiently document all the measures taken to meet these obligations, keep the documentation for 15 years and allow us to inspect the documentation on request at any time.
- (2) Any modifications with regard to the composition of the processed material or the structural design compared to previous deliveries or performances of the same type or any deviations from our specifications require our prior written consent. We are not obliged to examine deliveries or performances to ascertain similarity with those effected previously. On the contrary, the Supplier must take any necessary measures at its own discretion and at its own risk with respect to production, inspection and packaging to guarantee compliance with the requirements we specify at all times.
- (3) The Supplier shall give an assurance that all effective legal provisions with respect to quality, packaging and delivery of goods are met. It shall also give an assurance that all statutory safety and protective devices prescribed by regulatory bodies, mutual indemnity associations and the respective trade associations, all valid laws, ordinances and technical instructions, DIN regulations and VDE provisions as well as any other relevant regulations are included in the scope of delivery and performance and that the latter are complied with and taken into consideration.

## **8. Repeat Orders, Purchase by Sample**

- (1) For repeat orders of the same goods the attributes of the last order executed for this item shall be deemed guaranteed for the new item by the Supplier if we do not receive any written notification from the Supplier to the contrary within 10 working days after the date of the order.
- (2) For purchase by sample our sample approval must be effected in writing. Silence on our part denotes refusal.

## **9. Licences, Permits, Rights of Third Parties**

- (1) The Supplier shall undertake to obtain any required licences or permits and any other authorisation required for sale on the open market. It shall give any assurance that the supplied items are free from rights of third parties.
- (2) The Supplier shall be liable for claims arising from the infringement of industrial property rights or notifications of industrial property rights during utilisation of the supplied item or parts thereof as per the contract. The Supplier shall release us from any claims arising from the use of such industrial property rights, including any court fees, lawyer's fees or expenses incurred in the course of any legal dispute.

## **10. Documents and Secrecy, Provided Material, Tools**

- (1) Any business or technical information made accessible through us (including any features which can, for example, be found in items, documents or software surrendered to the Supplier or other knowledge or experience) must be kept secret with respect to third parties, unless they have been provenly made public, and may only be forwarded by the Supplier to employees whose services have to be enlisted for their use for the purpose of our delivery as a necessity and who are also obliged to maintain secrecy;

they shall remain our exclusive property. Such information may not be duplicated or used for commercial purposes without our prior written permission - apart from deliveries to us. At our request all information originating from us (if necessary, including any prepared copies or records) and items surrendered on a loan basis must be returned to us immediately and in full or destroyed. We shall reserve all rights to such information, including copyrights and the right to register industrial property rights.

- (2) Products which are manufactured according to documents we have drawn up, such as drawings, building plans, models or the like, or according to our confidential data, may neither be used by the Supplier itself nor offered or supplied to third parties. The same shall apply analogously to our printing orders.
- (3) Supplied material, including our equipment and tools, shall remain our property. These may only be used according to the terms of the contract. The processing of materials and the assembly of parts shall be carried out for us. The parties are agreed that we are co-owners of the product manufactured using our material in proportion to the value of the supplied material compared with the value of the total product. The Supplier shall hold the latter in safe custody for us with care, at its own risk and free of charge.
- (4) Unless agreed otherwise, we shall acquire full or co-ownership depending on the extent of our contribution to the proven costs for tools for producing the delivered item. Para (2) shall apply accordingly.

## **11. Delivery, Delivery Period and Delivery Default**

- (1) Agreed dates and time periods are binding. Compliance with the delivery date or the delivery period shall be determined by the date on which the receiving station we specify receives the goods. Noticeable delivery delays must be reported to us by the Supplier immediately.
- (2) In addition to the statutory rights, we are also entitled to withdraw from the contract in whole or in part (insofar as a fixed deal has not been agreed), after the expiry of a grace period, should the delivery periods not be observed, even if the Supplier is not at fault. In the case of default we shall be entitled to demand a contractual penalty from the Supplier. The latter shall amount to 0.5 % for each commenced week of delay, but in total at the most 5 % of the total value of the order. The Supplier is permitted to show that the delay caused either no damage or that the damage occurred is substantially less than the contractual penalty. The agreement of a contractual penalty or its enforcement shall not affect our legal claims. Any contractual penalties paid must be offset against claims for damages. We shall also be entitled to demand the delivery of partly completed works and to complete them ourselves or have them completed by other parties should the Supplier default; these part performances shall be reimbursed according to the agreed prices for the services rendered. If part of the ordered goods is accepted, this shall not exclude the right to withdraw with respect to the residual delivery. The Supplier shall refund us the damage caused by the delivery default, including any additional costs for obtaining a replacement or additional costs for completion of a work by us or third parties.
- (3) Part deliveries are inadmissible unless we have expressly agreed to them or we can reasonably be expected to accept them. The same shall apply to deliveries which exceed or fall short of the quantities ordered.
- (4) The unconditional acceptance of the late delivery or performance shall not entail any waiver of the claims for compensation due to the late delivery or performance to which we are entitled; this shall apply up to full payment of the remuneration we owe for the delivery or performance in question.
- (5) Should the fulfilment of our contractual obligations be significantly impeded or made impossible due to force majeure or other unforeseeable, extraordinary circumstances for which we are not responsible (e.g. war, blockade, fire, strike, lockout, operational disruptions, official interventions), we may withdraw from the contract in whole or in part or demand execution at a later date without the Supplier being entitled to assert any claims against us. If the Supplier cannot be reasonably expected to carry out the order in these cases, it may withdraw for its part.

## **12. Transfer of Shipment and Risk, Packaging, Delivery Note**

- (1) The delivery shall be effected, unless otherwise agreed, DDP INCOTERMS 2010 to the receiving station we specify in the order ("Place of Delivery"). The Supplier shall bear the property risk until we or our representatives accept the goods at the Place of Delivery. It shall also be liable for compliance with these terms of forwarding by its sub-contractors or representatives.
- (2) When choosing packaging the Supplier must comply with our wishes, the mode of transport and the usual commercial practices with the due diligence of a prudent businessman. The Supplier shall be obliged to furnish proof that proper packaging has been used. Each package must contain a packing slip on which the order number and the delivery note number are noted.
- (3) The Supplier shall pay packaging costs and provide the packaging material free of charge. The Supplier shall guarantee to take back and recycle the transit packaging free of charge.
- (4) The Supplier shall enclose the delivery notes in duplicate with the consignment. Delivery notes must include: delivery note number, order number (if available), order date, quantity information, article description, documentary proof, delivery destination and the delivery/creditor number we disclose.
- (5) Where delivery may be made exempt from VAT, the Supplier shall produce the proof required or contribute to the production of such proof.

## **13. Invoices**

- (1) Invoices must be issued in duplicate after delivery and performance have been rendered in accordance with the terms of the contract, stating our order number and other classification attributes. The invoice must contain all legally prescribed information and the same data as the delivery note as well as contractually agreed prices and total price. If the invoice contains differing data, we shall reserve the right to make a correction or to return the invoice to the Supplier for clarification with an extension of the time allowed for payment.
- (2) We shall only recognise invoices relating to services if timesheets and bills of materials confirmed by us are attached thereto.

## **14. Terms of Payment**

- (1) Unless otherwise agreed, payments shall be effected either within 30 days with a 3 % discount, within 60 days with a 2 % discount or within 90 days net after acceptance of the contractual performance and receipt of the invoice from the due date of the payment claim and from receipt of both the invoice and the goods or rendering of performance.
- (2) Payment shall be effected subject to inspection of the invoice and shall not constitute recognition of proper or faultless delivery/performance.
- (3) Should the contractual performance be defective, we shall be entitled to withhold payment until proper performance has been furnished on an appropriate scale irrespective of any guarantee claims.

## **15. Assignment of Claims; Retention of Title**

- (1) The Supplier is not entitled to assign its claims against us or have them collected by third parties without prior written consent from us, which may not be refused inequitably. This shall be without prejudice to § 354a HGB (German Commercial Code).
- (2) In the event the Supplier retains title to the goods delivered, such retention of title shall expire upon payment of the purchase price of such goods, at the latest, we being nevertheless entitled to resell the goods in the ordinary course of business, assigning in advance the claim arising under such resale, even before payment of the purchase price (simple and extended retention of title). In any event, all other forms of retention of title, in particular any retention of title with wider scope, are hereby excluded.

## **16. Warranty Claims, Recourse, Reimbursement of Expenses**

- (1) Acceptance shall be effected subject to inspection for flawlessness, in particular for accuracy, completeness and suitability. We shall be entitled to examine the subject of the contract, insofar as this is advisable in the proper course of business; any defects which are discovered, as well as hidden defects or defects which only come to light when processing of putting into operation the supplied item,

shall be notified immediately after they have been detected. In this respect the Supplier shall relinquish the plea of delayed notification of defects.

- (2) Unless otherwise agreed, the legal provisions relating to material defects and deficiencies in title shall apply.
- (3) Generally speaking, we shall be entitled to choose the type of subsequent performance. The Supplier shall be entitled to refuse the type of subsequent performance we choose in accordance with § 439 (3) BGB (German Civil Code).
- (4) Should the Supplier fail to start remedying the defect immediately after our request to remedy the defect, we shall be entitled in urgent cases, in particular to avert acute dangers or prevent larger scale damage, to carry this out ourselves at the Supplier's expense or to have it performed by third parties.
- (5) Claims for material defects shall become statute-barred after 3 years, unless the item has been used for a building according to its normal use and has caused its defectiveness. The limitation period for claims relating to material defects shall commence upon delivery of the subject of the contract (transfer of risk).
- (6) In the case of deficiencies of title the Supplier shall also release us from any existing claims of third parties. With respect to deficiencies of title a 3-year limitation period shall apply, too. This shall be without prejudice to the statutory limitation period for an in rem claim for return by third parties (§ 438 (1) No.1 BGB).
- (7) The limitation period for delivered parts serviced or repaired within the limitation period of our warranty claims shall start to run afresh on the date when the Supplier has met our claims for subsequent performance in full.
- (8) Should we incur costs, in particular transport, infrastructure, labour or material costs or costs for an incoming goods inspection on a scale that exceeds the usual requirements, due to the defective delivery of the subject of the contract, the Supplier must bear these costs. This shall also apply if only parts of a delivery are recognised as defective.
- (9) Should we take back products we have manufactured and/or sold due to the defectiveness of the subject of the contract delivered by the Supplier or if the purchase price with respect to us has therefore been reduced or if a claim has otherwise been lodged against us, we shall reserve the right to recourse against the Supplier; the otherwise required obligation to fix a time limit shall not apply to our warranty rights.
- (10) We shall be entitled to demand from the Supplier the reimbursement of expenses which we have had to bear in relation to our customer because the latter has lodged a claim against us for the reimbursement of expenses required for the purpose of subsequent performance, in particular transport, infrastructure, labour or material costs. The Supplier shall also refund the expenses we or our customers incur prior to or in connection with events taking place in relation to defect liability with the aim of preventing, averting or reducing damage at an early stage (e.g. recall measures).
- (11) Irrespective of the provision in Clause 16.(5), the limitation of actions shall enter into force in the cases outlined in Clause 16.(9) and 16.(10) at the earliest 2 months after the date when we have satisfied the claims directed at us by our client, but at the latest 5 years after delivery has been effected by the Supplier.
- (12) Should a defect of quality transpire within 6 months after the transfer of risk, it is presumed that the defect already existed upon the transfer of risk, unless this assumption is incompatible with the type of item or the defect.

## **17. Liability, compensation, product liability and recall**

- (1) The Supplier shall be liable for all damage and consequential damage we incur if its performance does not comply with the terms of the contract or if we withdraw from the contract.
- (2) The Supplier shall keep us free from claims for damages by third parties if third parties lodge a claim against us due to a performance by the Supplier which does not comply with the terms of the contract.
- (3) Should a claim be lodged against us based on product liability, the Supplier shall be obliged to release us from such claims where the damage has been caused by a fault in the subject of the contract delivered by the Supplier. In cases of liability contingent upon fault this shall only apply if the Supplier is responsible. If the cause of damage falls within the Supplier's sphere of responsibility, the onus of proof shall lie with the Supplier in this respect. The Supplier shall pay all costs and expenses in these cases,

including the costs of any prosecution or a recall measure. Apart from that the statutory provisions shall apply.

## 18. Export Control

- (1) The Supplier is obligated to indicate our order number and all information relevant under customs and export control law on all dispatch documents and delivery notes.
- (2) These and the following obligations refer to all goods delivered. Goods pursuant to these GTP are all merchandise and products as well as software and technology (documents for the production, usage or maintenance of products or software).
- (3) The Supplier is obligated in particular to inform us about any approval obligations with (re-)exports of its goods pursuant to German, European, US, export and customs provisions and the export and customs provisions of the country of origin of its goods. For this purpose, the Supplier will indicate the following information at least in its offers, order confirmations, invoices or delivery notes for each product delivered, indicating the customs tariff number:
  - the export list number pursuant to the German export list or the position of the EC Dual Use Directive Appendix I or Appendix IV respectively,  
*Note in this regard: If the goods should not be subject to these provisions, the Supplier must declare this separately.*
  - information about other specific goods checks (e.g. country-specific embargo measures),
  - the preferential origin of its goods,
  - indication whether the goods were produced in the US or outside of the US with the help of US technology, or incorporate US origin goods ("US goods"),  
*Note in this regard: If the goods incorporate US origin goods, the Supplier must declare the share of the US origin goods.*
  - for US goods the Export Control Classification Number (ECCN) pursuant to US Commerce Control List (CCL), and a declaration on whether the goods are subject to the International Traffic in Arms Regulations (ITAR),
  - a contact in its company to clarify any questions that we might have.
- (4) Information pursuant to customs and export law will be provided by the Supplier free of charge.

## 19. Place of Performance, Place of Jurisdiction, Applicable Law

- (1) The place of performance for deliveries or performance is the Place of Delivery we specify. The place of performance for payments is Chemnitz.
- (2) The place of jurisdiction for all disputes arising from the business connection is Zwickau.
- (3) German law shall apply to all legal relations between the parties with the exclusion of the conflict of laws provisions and the UN Sales Convention on Contracts for the International Sale of Goods (CISG). The customary commercial clauses must be interpreted according to the respective INCOTERMS valid at the time of the conclusion of the contract.

## 20. Written form, salvatory clause

- (1) Subsidiary agreements, modifications and amendments are only valid if they are agreed in writing.
- (2) Should a provision in these GTP and the other agreements reached be or become invalid, the validity of the remaining provisions of these GTP shall not be affected. The contracting parties shall be obliged to replace the invalid provision with a provision that comes as close as possible in terms of economic success.

\* \* \*