



Subject of these Terms and Conditions is provision of any services (hereinafter: "Services") (hereinafter: "T&C-Service") by DFS Aviation Services GmbH (hereinafter: „Contractor“) to its contractual partner (hereinafter „Customer“) (hereinafter collectively also referred to as "Parties").

## 1 Application

- 1.1 These T&C-Service as well as all provisions of the Contractor offer shall apply exclusively to all Contractor's offers and all later contractual relationships concluded on this basis. Differing or contrary terms of Customer or third parties shall not apply except if expressly agreed upon in writing. Contractor failure to object to Customer's additional or conflicting terms does not constitute as a waiver or consent of any terms contained in this T&C-Service.
- 1.2 These T&C-Service shall also govern all future transactions between the Parties.
- 1.3 These T&C-Service shall only apply vis-à-vis merchants (e.g. but not limited to companies) within the meaning of sec. 14 BGB (German Civil Code), governmental entities, or special governmental estates within the meaning of sec. 310 para. 1 BGB (German Civil Code). The grant of rights to Customer does explicitly not include the grant of rights to such companies that are affiliated companies ("verbundene Unternehmen") of Customer within the meaning of sec. 15 AktG (German Stock Corporation Act).
- 1.4 Where the context so permits, words importing the singular shall be deemed to include the plural and vice versa and words importing the masculine shall be deemed to include the feminine and vice versa.

## 2 Non-binding character of offer and conclusion of contractual relationship

Contractor's quotations are not binding offers but must be seen as invitations to Customer to submit a binding offer. The contractual relationship is concluded by Customer's order (offer) and by Contractor's acceptance (order confirmation). In case the acceptance differs from the offer, such acceptance constitutes a new non-binding offer by Contractor.

## 3 Services

- 3.1 Services are provided as deemed appropriate from existing Contractor experience. Thus, Services rendered by Contractor is given to the best of Contractor knowledge. Contractor cannot assume any commitment for its Services to meet precisely quoted values and areas of application.
- 3.2 If agreed upon in the contractual relationship, Contractor will outline its work results and submit it to Customer adequately documented.
- 3.3 In case of performance of training courses, Contractor does not assume any responsibility for a successful participation respectively a successful conclusion of Customer's participants regarding any training courses. Furthermore, Contractor does not warrant any kind of learning achievements regarding Customer's participants.

## 4 Place of performance and fulfillment

Place of performance and fulfillment will be Contractor's principal place of business respectively the business premises of DFS.

## 5 Prices

- 5.1 The Prices quoted in the Contractor offer or in the acceptance (order confirmation) of Contractor shall solely apply. If the Contractor's acceptance (order confirmation) does not include Prices expressly, the Prices of the corresponding Contractor offer applies. Additional services, which are not part of Contractor's offer or Contractor's acceptance (order confirmation), will be invoiced separately.
- 5.2 All Prices are quoted as net Prices and do not include statutory value added tax any other charges, which is to be paid additionally by Customer in the amount specified by applicable law.

## 6 Payment

- 6.1 Payment of Prices must be made exclusively to the account stated in section 6.2. Payment is due within 30 days following receipt of the invoice without any deductions.
- 6.2 The account reference is as follows:

### DFS Aviation Services GmbH

**Account No:** 091 3434 00  
**Sort Code:** 500 700 10  
**Bank:** Deutsche Bank Frankfurt  
**BIC:** DEUTDEFF  
**IBAN:** DE 34 5007 0010 0091 3434 00

- 6.3 From the due date default interest in the amount of 9 percentage points above the respective basic rate of interest of the European Central Bank p.a. shall accrue. Contractor reserves all rights to claim further damages due to default.
- 6.4 Regardless of the place of delivery of Products and/or provision of Services, the place of payment shall be Contractor's principal place of business.

## 7 Termination

- 7.1 The contractual period arises out the commissioned and/or agreed period or the ordered Services. A separate termination is not required as the contractual relationship ends with completion of Service provision.
- 7.2 The Parties may terminate the contractual relationship regarding provision of Services for convenience upon a written notice sent at least one month prior to the termination date.
- 7.3 Either Party may terminate in part or in full the contractual relationship for good cause at any time. If the good cause consists of a breach of an obligation under the contractual relationship, ermination is only permissible after unsuccessful expiration of a grace period or after a failed reminder.
- 7.4 Customer agrees to assume all costs accrued on Contractor's side until such time at which the termination takes effect, independent of the usability for Customer.
- 7.5 The notice of termination must be in text form.

## 8 Termination of training courses

Termination of the contractual relationship for good cause according to sec. 7.3 of this T&C-Service regarding the performance of training courses is possible but not limited to in the following cases:

- a participant of the Customer threatens the learning achievements of the other course participants; in particular, this participant causes a slowdown of the complete course;
- a participant of the Customer does not attend self-inflicted more than half of the (simulation-) exercises;
- a participant of the Customer repeatedly does not comply with course-related instructions (e.g. preparation of exercises) by the instructor;
- a participant of Customer insults or harms not only insignificantly an instructor or other participants.

In cases as mentioned above or comparable, Contractor can expel the respective participant of Customer permanently. Expulsion of a participant of Customer excludes any right of termination or right to rescind of Customer.

## 9 Cancellation of training courses

- 9.1 Training courses can be cancelled free of charge by Customer until five calendar weeks in advance of the agreed starting date of the course. A subsequent termination or non-participation does not affect Customer's obligation to pay the training course Price in full. Customer is entitled to prove that Contractor did not suffer any or lower damages. A partial participation of training courses – irrespective of the reason – does not result in any reduction of Price.
- 9.2 In case the minimum number of participants is not reached, or sickness of teaching staff as well as reasons beyond Contractor responsibility, Contractor reserves the right to cancel the training course. Contractor will inform Customer accordingly without delay. Furthermore, Contractor will make efforts to offer an alternative date for the training course. Where appropriate, an already paid course fee (Price) will be reimbursed.

## 10 Subcontracting

Contractor may at its sole discretion employ sub-contractors, e.g. in particular DFS Deutsche Flugsicherung GmbH (hereinafter: "DFS") for carrying out any or all parts of the Service.

## 11 Offset

Customer may only set off claims from Contractor against an undisputed or adjudicated counterclaim.

## 12 Retainer

Customer is entitled to claim retainer rights only to the extent such rights are based on the same transaction.

## 13 Usage Rights

- 13.1 Copyrights, Trademarks, Patents and other Intellectual Property Rights related to any exchanged Products, work results, information, documents and other design documents owned by Contractor or its subcontractor remain with the respective owner. Any kind of transfer (especially rights regarding Source Code) is excluded. All shared Products, work results, information,



- documents and other design documents are limited to objectives according to the contractual relationship or to the offer. Any additional or deviating right of use must be concluded separately between the Parties expressly.
- 13.2 Contractor hereby grants Customer a royalty free, non-exclusive ("einfaches Nutzungsrecht"), non-transferable, non-sublicensable, unlimited in respect of time and content but limited in respect to place to the business premises of Customer, right to use the Products respectively possible work results of Services regarding the intended use as stipulated in the contractual relationship. Work results encompass all works produced by Contractor, including but not limited to documents, project outlines, presentations and concepts. Contractor respectively the respective owner of the rights reserves expressly all modification and reproduction rights. This grant of rights does not affect any possible moral rights and other inalienable rights.
- 13.3 It is excluded to reproduce, including but not limited through the use of electronic systems in particular, to process, to duplicate, to distribute or to communicate to the public, any part of the Product respectively possible work results of Services – even in extracts – without prior written approval by Contractor.
- 14 Liability**
- 14.1 In cases of damages caused by Contractor due to wilful misconduct, gross negligence, liability will be according to the Applicable Law of this Agreement. This also applies to liability in respect of death or personal injury caused by Contractor's negligence. In all cases of negligence, Contractor shall also be liable for the breach of fundamental contractual obligations ("wesentliche Vertragspflichten"), which characterize the contract and Customer can rely on. In such cases, Contractor's liability is limited to typical and, in the moment of conclusion of the contractual relationship, foreseeable damages.
- 14.2 With the exception of liability due to wilful misconduct, gross negligence, liability in respect of death or personal injury, the total aggregated liability shall not in any circumstances exceed the value (net) of Contractor offer respectively of the contractual relationship.
- 14.3 With the exception of liability due to wilful misconduct, gross negligence, liability in respect of death or personal injury, liability regarding indirect and consequential damages is excluded. Furthermore, liability is excluded in case of non-fundamental contractual breaches or in case of an unforeseeable or an untypical breach of fundamental contractual obligations.
- 14.4 Any claim for damages arising under this provision, except based on paragraph (1) of this provision, shall become statute-barred 12 months following the date upon which the Service was performed or the Product was delivered by Contractor, irrespective of the date upon which the defect in question is detected by Customer.
- 15 Confidentiality**
- 15.1 Unless otherwise expressly stipulated in writing, no information provided to Contractor shall be regarded as confidential, unless their confidential nature is obvious.
- 15.2 Customer shall treat all information disclosed by Contractor as confidential information.
- 15.3 The confidentiality obligation shall not apply to information which
- was already known to the public or publicly available at the time when this contractual relationship is concluded or becomes known to the public at a later point in time without this representing a breach by the Receiving Party of its duties of confidentiality;
  - was already in the possession of the Receiving Party before it was disclosed and without there being a confidentiality obligation;
  - the respective other Party has approved for disclosure in writing;
  - must be disclosed on the basis of an official or judicial order or mandatory legal provisions.
- 15.4 The burden of proof for the exemptions listed in section 15.3 shall be on the Receiving Party. In the case of disclosure based on an official or judicial order or mandatory legal provisions, the Receiving Party shall inform the Disclosing Party in advance about the disclosure and restrict the disclosure to what is absolutely necessary.
- 16 Background check ("Zuverlässigkeitsprüfung")**
- 16.1 In case accesses to business premises of DFS is required, Customer must provide personal data (surname, first name, date and place of birth, nationality, home address, passport number, company address etc.) to enable a background check for security clearance (hereinafter: "ZÜP") in due time. Additionally (if required) applications for the ZÜP or positive outcomes of the ZÜP must be submitted to Contractor.
- 16.2 If the ZÜP is necessary, Customer shall commence to apply the ZÜP for all relevant employees intended to participate in the contractual relationship in due time. Furthermore, Customer must submit all employees' names to Contractor. As the ZÜP requires a consent by the respective employee, this employee must file application of the ZÜP.
- 16.3 In case the outcome of the ZÜP is negative and Entrance is denied, Customer shall appoint a different employee or both Parties have the right to terminate the contractual relationship.
- 16.4 Contractor is not liable in case of termination due to a negative ZÜP. Customer agrees to assume all costs accrued on the Contractor's side until such time at which the termination takes effect. The notice of termination must be in written form.
- 17 Force Majeure**
- 17.1 Contractor shall not be liable for any failure or delay in performance if such failure or delay is caused by Force Majeure. The performance of the relevant part(s) of the contractual relationship will be suspended for the period such failure or delay continues, without Contractor being responsible or liable for any damage resulting therefrom.
- 17.2 The expression "Force Majeure" shall mean and include any circumstances or occurrences beyond the Parties reasonable control - whether or not foreseeable at the time of the contractual relationship - as a result of which Contractor cannot reasonably be required to execute its contractual obligations. This includes Force Majeure and/or default by one of Contractor's suppliers and/or subcontractors. In particular "Force Majeure" shall include but is not limited to fire, flood, drought, earthquake, storm, epidemic or other natural event; any act of any sovereign including but not limited to war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power of confiscation, nationalization, requisition, destruction or damage to property by or under the order of any government or public or local authority or imposition of government sanction embargo or similar action; any order, decree, sabotage, blockade, strike, lockout; any other matter or cause beyond the reasonable control of either party which prevents or substantially limits any performance of the contractual relationship.
- 17.3 In the event that the Force Majeure extends for a period of three (3) consecutive months (or in the event that the delay is reasonably expected by Contractor to extend for a period of three (3) consecutive months), Contractor shall be entitled to terminate or to revoke all or any part of the contractual relationship without any liability or break-up fee. Customer agrees to assume all costs accrued on the Contractor's side until such time at which the termination or revocation takes effect. The notice of termination or revocation must be in written form.
- 18 Export and Customs**
- 18.1 Intended shipments of Products, materials, transmissions of software and technology (including making such available in electronic form) (hereinafter: "Goods") and any kind of technical services shall be under the precedent condition that fulfilment is not restricted by any national or international export control regulations, in particular embargoes or any other sanctions and is not restricted by decisions of any competent export control authority.
- 18.2 Customer is obliged to provide respectively to supply all information and documentation required for export / intra-EU-transfer / import. Delays caused by export checks or licensing procedures shall override any lead times or deadlines stipulated. If any required licenses cannot be obtained for certain Goods respectively technical services, this contractual relationship shall be considered not concluded regarding the respective Goods and/or technical services. Any claims for damages in this regard and due to the aforementioned failure to observe deadlines shall be excluded.
- 18.3 Contractor may terminate or revoke the contractual relationship without notice, if this is required to comply with national or international regulations.
- 18.4 In case of a termination or revocation by Contractor liability and any further reaching claims are excluded. Customer agrees to assume all costs accrued on the Contractor's side until such time at which the termination or revocation takes effect. The notice of termination or revocation must be in written form.
- 18.5 If Contractor approves a transfer of delivered Goods, respectively provided technical services to a domestic or an international third party, regulations regarding the applicable national or international (re-)export obligations must be complied with by Customer.
- 18.6 All previous regulations of section 18 **Fehler! Verweisquelle konnte nicht gefunden werden.** shall apply accordingly to any border, customs and/or other police matter, which have any effect on the delivery/shipment/export of Goods and any kind of technical services.

# Terms and Conditions for provision of services of DFS Aviation Services GmbH (T&C-Service)



DFS Aviation Services

Status: 01<sup>st</sup> November 2018

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## 19 Communication

If not stipulated differently, any notice or other communication required to be received by a party is only effective at the moment it reaches this Party in text form. If a time limit has to be observed, the notice or other communication has to reach the recipient party within such time limit.

## 20 General note

In case Contractor subcontracting of training courses to DFS is necessary, these training courses will be conducted in responsibility of the DFS-Department Academy, certified as a Training Organization in compliance with the essential requirements set out in the Regulation (EU) No 2015/340. DFS is in the possession of a valid certificate as a Training Organization. A copy of this certificate, which was issued on 20th December 2016 under the number 150 by the German National Supervisory Authority Bundesaufsichtsamt für Flugsicherung (hereinafter: "BAF"), will be enclosed in this T&C-Service in an Annex.

## 21 Personal Data

21.1 If necessary to fulfil its contractual obligations, Contractor may collect, retain, use personal data and may transmit this data to its affiliated enterprises (within the meaning of § 15 AktG (German Stock Corporation Act)).

21.2 In the event the Parties receive any personal data according to the Regulation (EU) No. 2016/679 (General Data Protection Regulation - GDPR) or the Bundesdatenschutzgesetz (German Data Protection Act - BDSG), each Party warrants to comply with all applicable EU and German data protection regulations. The Receiving Party is aware of the fact that confidential information according to section 15 or any other content or information received by the Disclosing Party could be considered personal data and warrants that any of these personal data have been and will be collected, processed and used in accordance with all applicable EU and German data protection regulations.

## 22 Applicable Law

The contractual relationship shall be governed and construed by the laws of the Federal Republic of Germany (excluding the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG)).

## 23 Jurisdiction

Any dispute arising out of or in connection with this contractual relationship shall be heard, at Contractor's option, at Frankfurt am Main (Germany) or Customer's principal place of business.