

# Terms and Conditions (work contract)

of DFS Aviation Services GmbH

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



DFS Aviation Services

Subject of these Terms and Conditions is the manufacturing of software, hardware, equipment, components, parts, and materials (hereinafter: "**Products**") (hereinafter: "**T&C-Work**") 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-Work as well as all provisions of the Contractor offer shall apply exclusively to all Contractor 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-Work.
- 1.2 These T&C-Work shall also govern all future transactions between the Parties.
- 1.3 These T&C-Work 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 Product quality and guarantees

- 3.1 Unless otherwise agreed, the quality of the Products is exclusively determined by Contractor's product / technical specifications.
- 3.2 The properties of specimens and samples are binding only insofar as they have been explicitly agreed to define the quality of the Products.
- 3.3 Quality and shelf-life data as well as other data constitute a guarantee only if they have been agreed and designated as such.
- 3.4 Any advice and information with respect to suitability and application of the Products shall not relieve Customer from undertaking his own inspections, investigations and tests.

## 4 Place of performance, fulfillment and supplementary performance

Place of performance, fulfillment and supplementary performance will be Contractor's principal place of business.

## 5 Acceptance ("Abnahme")

- 5.1 Customer is obliged to accept the Product produced in conformity with the contract, except to the extent that, in view of the quality of the work, acceptance is excluded. Acceptance may not be refused by reason of trivial defects.
- 5.2 It is equivalent to acceptance if Customer does not accept the Product within a reasonable period of time specified for him by Contractor, although he is under a duty to do so. If Customer does not declare in writing that he refuses to accept the Product within that period, acceptance shall be deemed to have taken place.
- 5.3 A report of the acceptance ("Abnahmeprotokoll") test shall be compiled, signed by both Parties.

## 6 Prices

- 6.1 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.
- 6.2 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.
- 6.3 Unless otherwise expressly agreed, the Prices are quoted ex works of Contractor. If applicable, Customer shall bear all additional freight costs, packing costs in excess of standard packing, public fees (including withholding taxes) and duties.

## 7 Payment

- 7.1 Payment of Prices must be made exclusively to the account stated in section 7.2. Payment is due within 30 days following receipt of the invoice without any deductions.
- 7.2 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
- 7.3 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.
- 7.4 Regardless of the place of delivery of Products, the place of payment shall be Contractor's principal place of business.

## 8 Delivery

- 8.1 Delivery is conditioned upon timely and proper performance of all duties of Customer. Defenses based on non-performance of the contract are reserved.
- 8.2 Unless otherwise expressly agreed, Contractor shall deliver ex works (EXW INCOTERMS 2010)
- 8.3 Delivery periods shall only be binding if expressly agreed in writing by Contractor. Delivery periods shall be deemed to be met on timely notification of readiness to ship, if the Products cannot be dispatched in time through no fault of Contractor.
- 8.4 With respect to delivery periods and dates, which are expressly defined as non-binding in the contractual relationship, Customer may - two weeks after expiry of such a delivery period or date - set an adequate grace period for delivery. Contractor may only be deemed to be in default after expiry of such a grace period.
- 8.5 Without prejudicing Contractor's rights from Customer's default, delivery periods and dates shall be deemed to be extended by the period of time during which Customer fails to comply with his obligations towards Contractor.
- 8.6 Contractor may perform partial deliveries and render partial services if such action would not unreasonably affect Customer.

## 9 Shipment and Passing of Risks ("Gefährübergang")

- 9.1 If Customer demands shipment of the Products, the risk of loss or damage to the Products passes to Customer upon dispatch or handover to the forwarder, carrier or other person or body specified to carry out the shipment.
- 9.2 If Customer defaults in accepting, Contractor shall be entitled to claim refund of any expenditure associated therewith (including claims of refund of any expenditure associated therewith by Contractor's subcontractor) and the risk of accidental deterioration, loss and destruction shall pass to Customer.

## 10 Retention of Title ("Eigentumsvorbehalt")

- 10.1 Title to the Products delivered shall not pass to Customer before the Price has been paid in full. (Simple Retention of Title)
- 10.2 In case Customer has paid the Price for the Products delivered but not yet completely fulfilled other debts arising out of his business relationship with Contractor, Contractor retains, in addition, title to the Products delivered until all such outstanding debts have been completely paid. (Expanded Retention of Title)
- 10.3 In the event Customer processes the Products delivered by Contractor, Contractor shall be considered manufacturer and shall directly acquire sole title to the newly produced goods. If the processing involves other materials, Contractor shall directly acquire joint title to the newly produced goods in the proportion of the invoice value of the Products delivered by Contractor to the invoice value of the other materials. (Retention of Title with processing clause)
- 10.4 If the Products delivered by Contractor are combined or blended with material owned by Customer, which has to be considered the main material, it is deemed to be agreed that Customer transfers to Contractor the joint title to such main material in the proportion of the invoice value of the Products delivered by Contractor to the invoice value (or, if the invoice value cannot be determined to the market value) of the main material. Customer holds in custody for Contractor any sole or joint ownership originating therefrom at no expense for Contractor. (Retention of Title with combination and blending clause)
- 10.5 Until Customer gains ownership of the Products, Customer shall handle the Products with due care, maintain suitable insurance for the Products and, to the extent necessary, service and maintain the Products.

# Terms and Conditions (work contract)

of DFS Aviation Services GmbH

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



DFS Aviation Services

- 10.6 Customer shall have in the ordinary course of business free disposal of the Products owned by Contractor, provided that Customer meets its obligations under the business relationship with Contractor in due time. Customer already assigns to Contractor all claims in connection with the sale of goods to which Contractor reserves the right of retention of title when concluding the agreement with Contractor; should Contractor have acquired joint title in case of processing, combination or blending, such assignment to Contractor takes place in the proportion of the value of the Products delivered by Contractor with retention of title to the value of the goods of third parties with retention of title. Customer already assigns to Contractor any future confirmed balance claims under current account agreements in the amount of the outstanding claims of Contractor when concluding the agreement with Contractor. (Extended Retention of Title with blanket assignment)
- 10.7 At the request of Contractor, Customer shall provide all necessary information on the inventory of Products owned by Contractor and on the claims assigned to Contractor. Furthermore, at the request of Contractor, Customer shall identify on the packaging Contractor's title to the Products and shall notify its customers of the assignment of the claims to Contractor. (Right of Access / Disclosure)
- 10.8 In the event of late payment by Customer, Contractor is entitled, without revoking the agreement and without granting a period of grace, to demand the temporary surrender of the Products owned by Contractor at Customer's expense. (Late Payment)
- 10.9 Insofar as the above-mentioned securities exceed the secured claim by more than 10%. Contractor is obligated, upon their choice, to release such securities upon Customer's request. (Partial Waiver Clause)
- 11 Warranty ("Gewährleistung")**
- 11.1 Precondition for any warranty claim of Customer – regarding Products delivered by Contractor – is Customer's full compliance with all requirements regarding inspection and objection established by sec. 377 HGB (German Commercial Code).
- 11.2 Contractor shall remedy defects if the warranty claim is valid and within the warranty period. It is at Contractor's discretion whether Contractor remedies the defect by repair or replacement. Contractor shall only bear the costs necessary to remedy the defect. Furthermore, Contractor shall be entitled to refuse to remedy defects in accordance with applicable statutory rights.
- 11.3 Customer shall be entitled to revoke the contract or reduce the contract price in accordance with his statutory rights, however, Customer shall not be entitled to revoke the contract or to reduce the contract price, unless Customer has previously given Contractor twice a reasonable period to remedy the defect which Contractor has failed to observe, unless setting of such a period to remedy defects is dispensable. In the event of revocation, Customer shall be liable for any intentional or negligent actions that cause destruction or loss of the Products as well as for failure to derive benefits from the Products.
- 11.4 Specifications of Products especially pictures, drawings, data about weight, measure and capacity contained in offers and brochures are to be considered as average data, if not expressly stated otherwise. Such specifications and data shall in no way constitute a quality warranty but merely a description or labelling of the Product.
- 11.5 Any warranty shall be void if operating or maintenance instructions by Contractor are not observed, if changes are made to the Products by Customer or on behalf of Customer, if Customer or on behalf of Customer parts are replaced or materials used that are not in accordance with the original product specifications by Contractor, unless Customer can prove that the defect in question resulted from another cause.
- 11.6 Any warranty of quality claim shall become statute-barred 12 months following the date upon which the Products are delivered to Customer, irrespective of the date upon which the defect in question is detected by Customer. In cases of damages caused by Contractor due to wilful misconduct, gross negligence and fraudulent concealment or in respect of death or personal injury caused by Contractor's negligence, respectively claims based on the German Act on Liability for Defective Products Product Liability Act (ProdHaftG), this does not apply.
- 12 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 sale respectively manufacturing of Products.
- 13 Offset**
- Customer may only set off claims from Contractor against an undisputed or adjudicated counterclaim.
- 14 Retainer**
- Customer is entitled to claim retainer rights only to the extent such rights are based on the same transaction.
- 15 Usage Rights**
- 15.1 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.
- 15.2 Contractor hereby grants Customer a royalty free, non-exclusive ("einfaches Nutzungsrecht"), non-transferable, non-sublicenseable, 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.
- 15.3 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.
- 16 Liability**
- 16.1 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.
- 16.2 With the exception of liability due to wilful misconduct, gross negligence, liability in respect of death or personal injury, respectively claims based on the German Act on Liability for Defective Products Product Liability Act (ProdHaftG), the total aggregated liability shall not in any circumstances exceed the value (net) of Contractor offer respectively of the contractual relationship.
- 16.3 With the exception of liability due to wilful misconduct, gross negligence, liability in respect of death or personal injury, respectively claims based on the German Act on Liability for Defective Products Product Liability Act (ProdHaftG), 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.
- 16.4 Any claim for damages arising under this provision, except based on paragraph (1) of this provision respectively claims based on the German Act on Liability for Defective Products Product Liability Act (ProdHaftG), 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.
- 17 Termination**
- 17.1 If Customer terminates the contract before work started according to sec. 649 para. 1 BGB (German Civil Code), Contractor is entitled to demand a flat-fee remuneration of 15 % of the Price.
- 17.2 If Customer terminates the contract after work started, Contractor is entitled to demand the agreed remuneration. Customer is entitled to prove that Contractor did suffer lower damages.
- 18 Confidentiality**
- 18.1 Unless otherwise expressly stipulated in writing, no information provided to Contractor shall be regarded as confidential, unless their confidential nature is obvious.
- 18.2 Customer shall treat all information disclosed by Contractor as confidential information.
- 18.3 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.
- 18.4 The burden of proof for the exemptions listed in section 18.3 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.
- 19 Background check ("Zuverlässigkeitsprüfung")**
- 19.1 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.
- 19.2 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.
- 19.3 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 revoke the contractual relationship.
- 19.4 Contractor is not liable in case of revocation due to a negative ZÜP. Customer agrees to assume all costs accrued on the Contractor's side until such time at which the revocation takes effect. The notice of revocation must be in written form.
- 20 Force Majeure**
- 20.1 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.
- 20.2 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.
- 20.3 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.
- 21 Export and Customs**
- 21.1 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.
- 21.2 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 services. Any claims for damages in this regard and due to the aforementioned failure to observe deadlines shall be excluded.
- 21.3 Contractor may terminate or revoke the contractual relationship without notice, if this is required to comply with national or international regulations.
- 21.4 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.
- 21.5 If Contractor approves a transfer of any 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.
- 21.6 All previous regulations of section 21 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.
- 22 Data protection**
- 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 **Fehler! Verweisquelle konnte nicht gefunden werden.** 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.
- 23 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.
- 24 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)).
- 25 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.