



# airwerk GmbH

## Terms and Conditions of Purchase for Works and Services

### 1. Order and order confirmation

#### 1.1

The purchaser may revoke the order if the supplier has not accepted the order in writing within two weeks of receipt (order confirmation).

#### 1.2

Deviations, changes or additions to the order by means of the order confirmation will only be a contractual part if they are confirmed in writing by the purchaser. In particular, the purchaser is only bound by the General Terms and Conditions of the Contractor in so far as they conform to his own terms or when has agreed to them in writing. The acceptance of deliveries or services as well as payments do not imply consent.

### 2. Rights of use

#### 2.1

The supplier grants the purchaser the non-exclusive, transferable, worldwide and temporally unlimited right,

##### 2.1.1

to use the supplies and services, including the related documents, to integrate them into other products and distribute them all over the world;

##### 2.1.2

to sub-license the right of use pursuant to number 2.1.1 to affiliates and end users.

### 3. Performance time, contractual penalty for defaults

#### 3.1

For the punctuality of deliveries or subsequent fulfilments, the date of receipt at the place of receipt – which is specified by the purchaser – is the relevant factor. For the punctuality of deliveries that require installation or assembly and services, the date of approval by the customer is the relevant factor.

#### 3.2

If a delay in a delivery, service or subsequent fulfilment is apparent, the purchaser shall be informed immediately and his decision shall be requested.

#### 3.3

If the supplier is in default, the purchaser is authorized to charge a penalty of 0.3% for each commenced work day of the delay, however not more than 5% of the total contract sum. If the corresponding reservation is not made upon the acceptance of the deliveries, services or subsequent fulfilments, the contractual penalty may be asserted regardless, if the reservation is declared before the final payment is made.

#### **4. Service performance**

##### 4.1

In general the supplier provides the contractual services by his own employees. The passing on of orders to third parties or subcontracting is inadmissible without the prior written approval of the customer. This entitles the customer to withdraw from the contract in whole or in part and to demand compensation. For non-German employees, the contractor will prove the existence of the required work permit at the request of the purchaser.

##### 4.2

For the purpose of providing the works and services, the supplier may only employ employees who are not listed in relevant sanctions lists.

#### **5. Transfer of risk, dispatch, place of performance, transfer of ownership**

##### 5.1

Upon deliveries that require installation or assembly and upon services, the risks are transferred with the acceptance. In the case of deliveries without installation or assembly, the risks are transferred with the receipt at the specified receiving point.

##### 5.2

Unless agreed otherwise, the shipping and packaging costs is compensated with the agreed payment. If the prices is ex works or ex warehouse of the supplier, shipping is to be effected at the lowest costs possible if the customer has not prescribed a specific mode of transport. Additional costs due to a non-adherence of the dispatching regulations shall be borne by the supplier. In the event that the prices are determined free recipient, the purchaser can also determine the mode of transport. Additional expenses which are necessary for the accelerated transportation to meet a delivery must be borne by the supplier.

##### 5.3

All deliveries shall include the packing slips or shipping orders along with an indication of the content as well as the full purchase order number. The shipping must be indicated immediately with the same data.

##### 5.4

If the transport is performed by a carrier commissioned by the customer, the supplier will inform the carrier of the necessary data concerning dangerous goods in accordance with legal requirements

##### 5.5

If the purchaser notifies the supplier that a further transport is planned with another transport organization, the supplier will take the necessary dangerous goods regulations for further transports into account.

##### 5.6

If the supplier violates his obligations pursuant to clause 5, he shall bear all expenses and damages incurred by the purchaser therefrom, except when the supplier is not responsible for the breach of duty.

##### 5.7

The property shall be transferred to the purchaser with the delivery or acceptance. In the case of work services, it must be noted that these are subject to an acceptance test by the purchaser after provision by the supplier. The purchaser will declare the acceptance of the service in writing or any other appropriate form upon completion of the test, if the service is free from defects.

## **6. Invoices**

On invoices the order numbers and the numbers of each individual item must be listed. As long as this information are missing, invoices shall not be payable. Invoice copies must be labelled as duplicates. The supplier is responsible for the proper taxation of the income tax on all payments and, where applicable, the transfer of the value added tax. If the services rendered by the supplier are subject to value added taxes and are duly invoiced by the supplier, the purchaser is willing to pay the value added tax on the agreed payment.

## **7. Payments**

### 7.1

Payments shall be payable net within 60 days, unless agreed otherwise. In case of payment within 14 days, the customer is authorized to a deduction of 3% cash discount. A payment within 30 days allows for a deduction of 2% discount on the agreed payment.

### 7.2

The payment term begins as soon as the delivery or service has been completed and the duly issued invoice has been received. If the supplier has to provide material tests, test reports, quality documents or other documents, the completeness of the delivery and service also requires the receipt of these documents. Cash discount deduction is also permitted if the purchaser offsets or withholds appropriate payments due to defects; the payment term begins after these defects have been eliminated completely.

### 7.3

If the purchaser is a business person, the purchaser shall only be in default if he fails to pay a reminder from the supplier after the due date of the payment.

### 7.4

Payments shall not constitute acceptance of the deliveries or services as contractual.

## **8. Receiving inspections**

### 8.1

After receipt the purchaser shall immediately check the deliveries, whether they correspond to the quantity and type ordered and whether there are visible damage that occurred during transportation or externally recognizable defects.

### 8.2

If the purchaser identifies a defect in the above-mentioned tests or later, he shall notify the supplier thereof.

### 8.3

Claims due to defects shall be made within one month after delivery or service or one month after their identification, if the defects are only noticed when processed or in use.

### 8.4

The purchaser shall not be subject to any more tests and notifications than the ones mentioned before.

## 9. Liability for defects

### 9.1

If defects are detected before or during the transfer of risk or during the limitation periods described in 9.9 and 9.10, the supplier shall, at his own expense and at the purchaser's option, either rectify the defects or deliver a new product or provide a new service without defects. This also applies for deliveries for which the tests have been restricted to taking samples only. The purchaser's choice shall be made according to equitable discretion.

### 9.2

If the supplier fails to rectify the faulty delivery within a reasonable time as set by the purchaser, the purchaser shall be entitled to withdraw the contract in whole or in part without having to compensate the supplier. The purchaser is also entitled to reduce the price or to carry out the repair or replacement of the goods himself at the cost of the supplier and to demand compensation instead of service. The §§ 281 (2) and 323 (2) of the German Civil Code (BGB) remain unaffected.

### 9.3

Improvements can be performed at the expense of the supplier without setting a deadline, if the goods are delivered after the occurrence of the delay.

### 9.4

The same applies if the purchaser, who in order to avoid his own default or in case of some other urgency, has a special interest in having the faulty delivery rectified immediately and has notified the supplier to eliminate the defect within a reasonable period, which however is not acceptable for the purchaser.

### 9.5

The above claims become time-barred after one year from the notification of the defect, but in no case before expiry of the limitation periods referred to in this clause 9.

### 9.6

Any further or other statutory claims shall remain unaffected.

### 9.7

Insofar as the supplier, in order to fulfill his duty to remedy defects resupplies or repairs, sends a replacement product or repairs the defect, the time limits listed in points 9.9 and 9.10 start over again.

### 9.8

Irrespective of the transfer of risk, the supplier shall bear the costs and risks of the actions that are required for the rectification of the defective delivery (e.g. return shipment costs, transport costs).

### 9.9

Claims for material defects shall become time-barred within three years, unless the law provides for longer time limits.

### 9.10

Claims for legal defects of title become time-barred after five years, unless the law provides for longer time limits.

#### 9.11

The limitation period starts with the transfer of risk (section 5.1). For deliveries to sites where the purchaser carries out external orders (outside of his place of business in Emstek), the period of warranty starts with the site acceptance by the purchaser's principal or at latest one year after the transfer of risk.

### **10. Verification of freedom from defects of title / Duty of notification**

The delivery of products that are free of defects of title (non-infringement by third parties), is an essential contractual obligation for the purchaser. Thus it is the supplier's duty to verify the title of the product and to inform the purchaser of any possible conflicting industrial and intellectual property rights. A breach of duty is subject to the regular statutory limitation period.

### **11. The transfer of orders to third parties**

Transferring orders to third parties, without prior written consent of the purchaser, is prohibited. It entitles the purchaser to withdraw from the contract in full or in part, as well as to demand compensation.

### **12. Material supply**

#### 12.1

Materials provided remain the property of the purchaser and shall be stored separately, identified as property of the purchaser and managed free of charge. Such materials shall only be used for orders placed by the purchaser. In the case of culpable value reduction, damage or loss, the supplier must replace/compensate the purchaser. The supplier also has to take responsibility for ordinary negligence. This shall also apply to the provision of materials for an order in exchange for a fee.

#### 12.2

Processing or remodeling the material is carried out for the purchaser. The purchaser shall immediately acquire ownership of the new or remodeled goods. If this is not possible due to legal reasons, the purchaser and the supplier agree that the purchaser acquires ownership of the new goods at the moment the processing or remodeling takes place. The supplier shall store the new goods and keep them safe with the care and diligence of a prudent businessman.

### **13. Tools, forms, patterns, secrecy, etc.**

#### 13.1

The tools, molds, models, mockups, profiles, drawings, standard specification sheets, manuscripts and gages, ceded for use by the purchaser, as well as the manufactured goods made using them, may not be passed on to a third party or be used for any further contractual purposes without the explicit consent of the purchaser in a written agreement. Such documents have to be protected by the supplier against any unauthorized viewing or use. The supplier shall return all documents and other auxiliary materials (including copies) that he received or produced in this context upon acceptance or delivery of the results at the latest, or respectively, when the acceptance or delivery is not possible due to the nature of the events, after performing the agreed services. Pending other laws, the purchaser can demand the surrender of property and restitution, if the contractor neglects his duties.

#### 13.2

The supplier shall not permit third parties access to information obtained from the purchaser unless such is already common knowledge or the supplier has gained knowledge thereof in another lawful manner. If the purchaser agrees on the passing on of orders to third parties, these third parties must be obligated accordingly in writing.

## **14. Secrecy, data protection, information security**

### 14.1

The supplier shall keep confidential the results as well as any knowledge and experiences, documents, tasks, business transactions or any other information as well as conclusion of the contract that he obtained about the purchaser due to the rendering of the service and the results towards third parties that were not involved in performing the contract orders – also beyond the duration of the contract – as long as and as far as these have not become common knowledge by lawful means or unless the purchaser agrees in writing on a case-by-case basis. The supplier will use the information exclusively for the purposes necessary to provide the service.

### 14.2

The supplier shall take appropriate measures for data backup and protection of its IT systems against programs with damaging functions (viruses) and the access of unauthorized third parties in order to adequately protect the information obtained from the purchaser and the results produced for him against loss, change, transfer or access by unauthorized third parties.

### 14.3

Insofar as the supplier obtains access to personal data during the provision of the service, the supplier shall comply with the legal regulations on data protection and enable the purchaser to inform himself about the compliance. The supplier shall oblige his employees and freelancers to comply in writing in accordance with § 5 BDSG.

## **15. Assignment of claims**

Assignment of claims is only permitted with the prior written consent of the purchaser.

## **16. Insolvency / bankruptcy of the supplier**

Should the supplier cease to make payments, or if an interim insolvency administrator is appointed or if insolvency proceedings are commenced in relation to the assets of the supplier, the purchaser may withdraw from the contract in whole or in part or terminate the contract. In the event of termination the purchaser may continue to utilize existing facilities, deliveries or services already performed by the supplier in exchange for reasonable payment.

## **17. Code of Conduct for the supplier / Safety in the supply chain**

### 17.1

The supplier is obliged to comply with the laws of the applicable legal system(s). In particular, he will not participate actively or passively, directly or indirectly, in any form of bribery, violation of the fundamental rights of his employees or child labor. He will also be responsible for the health and safety of his employees at the workplace, heed the environmental protection laws and use best efforts to encourage and demand adherence to this Code of Conduct with his suppliers.

### 17.2

The supplier shall provide the necessary organizational instructions and take measures, particularly with regard to the security of the following: property, packaging and transport, business partners, personnel and information - in order to guarantee the security of the supply chain according to the requirements of respective internationally recognized initiatives. The supplier protects the deliveries and services that are intended for the customer, or third parties designated by the customer, against unauthorized access and manipulation. The

supplier exclusively uses reliable personnel for such deliveries and services, and obliges any subcontractors to take appropriate measures themselves.

### 17.3

If the supplier culpably breaches the obligations under clause 17, then the purchaser is entitled to withdraw from the contract or terminate the contract without prejudice to further claims. So far as the elimination of this breach of duty is possible, this right may only be exercised an appropriate period set for the elimination of this breach of duty has fruitlessly expired.

## **18. Product-oriented environmental protection, declaration requirements, hazardous goods**

### 18.1

If the supplier provides products containing components which are subject to legal material restrictions and / or material information requirements, the supplier shall declare these substances at the time of the first delivery of the products according to the laws and regulations.

### 18.2

If the delivery contains goods which are to be classified as hazardous goods according to international regulations, the supplier shall notify the purchaser thereof upon order confirmation at the latest and in a form that the supplier and purchaser agreed on.

## **19. Provisions on export control and foreign trade data**

### 19.1

The supplier shall comply with all applicable export control, customs and foreign trade regulations ("Außenwirtschaftsrecht"). The supplier shall advise the purchaser in writing within two weeks of receipt of the order - and in case of any changes without undue delay - of any information and data required by purchaser to comply with all Foreign Trade Regulations in the case of export and import as well as re-export, including:

- all applicable export list numbers;
- the statistical goods number according to the current classification of the foreign trade statistics and;
- the country of origin (non-preferential origin) and, where requested by the purchaser, supplier declarations on the preferential origin (for European suppliers) or certificates for preference (for non-European suppliers).

### 19.2

If the supplier violates his obligations pursuant to clause 19.1, he shall bear all expenses and damages incurred by the purchaser therefrom, unless the supplier is not responsible for the breach of duty.

## **20. Supplementary provisions**

Insofar as the terms and conditions of purchasing and ordering do not contain any regulations, the legal provisions apply.

## **21. Jurisdiction, applicable law**

### 21.1

Jurisdiction is, if the supplier is a merchant, Oldenburg / Lower Saxony.

### 21.2

German substantive law shall apply, with the exclusion of the UN sales law CISG dated 11.04.1980