

# Lufthansa Aviation Training Austria GmbH

## General Purchasing Conditions

### 1. Scope

These General Purchasing Conditions govern the fundamental legal relations between the supplier and Lufthansa Flight Training Austria GmbH ("LAT AT") for all ordered goods, work and services. These Conditions may be supplemented by additional agreements covering specific orders. Any amendments and supplements hereto shall be in writing to be effective. Contrary general business conditions shall not apply even if they are not expressly rejected in a specific case.

### 2. Ordering and order acknowledgement

2.1 LAT AT may revoke its order at any time before receipt of the supplier's written order acknowledgement. Orders should be acknowledged within 2 weeks of their receipt.

2.2 In the event that the order acknowledgement departs from the order, LAT AT shall only be bound if it agrees to the departure in writing. Nor does acceptance of deliveries or services and payments on the part of LAT AT constitute consent.

### 3. Deliveries, delivery dates and default

3.1 The contractual deliveries shall be made to the location specified by LAT AT.

3.2 Delivery dates and particulars of delivery times are binding. Adherence to the delivery date or the delivery time depends crucially on the receipt of the goods at LAT AT. If the contractual service involves the manufacture, erection or assembly of a work, its acceptance shall be crucial. The supplier shall notify LAT AT at once of any foreseeable delay in deliveries. Partial deliveries and premature deliveries shall be subject to prior review with LAT AT.

3.3 In the event that the supplier defaults, LAT AT shall be entitled to the full rights set forth in the provisions of statute. If the contractor is in default with adherence to a contractually agreed delivery date, it shall pay the client a contractual penalty amounting to 0.2% of the net order sum, though max 5.0% of the net order sum, for each working day that culpably exceeds the delivery date. The assertion of claims going beyond this by the client is not excluded; the forfeited contractual penalty shall be offset with the client's further-going claim to compensation. LAT AT reserves the right to claim the contractual penalty until final payment.

### 4. Packaging and transport

4.1 The supplier shall be responsible for proper packaging, taking account of the shipment type concerned, and shall bear the onus of proof. Failing special arrangements, the supplier shall, at its expense, take back the packaging and properly dispose of same. Place of performance for return of the packaging is the transfer location of the goods.

4.2 Delivery notes shall be affixed to the outside of the packaging and shall contain the order number, the article designation with part number, the delivery quantity and any remarks on partial deliveries. Deliveries consisting of several parts or packages shall be marked as belonging together.

4.3 Failing other arrangements, shipping costs shall be borne by the supplier. In pricing ex works or ex sales depot of the supplier, shipping shall be at the lowest cost in each case, unless LAT AT has prescribed a specific mode of transport. Additional costs due to non-adherence to forwarding instructions shall be borne by the supplier.

4.4 In pricing free recipient, the supplier may determine the mode of transport. Additional costs for any accelerated

transportation necessary to adhere to a delivery date confirmed by the supplier shall be borne by the latter.

4.5 Transport of the goods to be delivered is at the supplier's risk. The supplier is free to arrange for insurance.

#### **5. Passage of risk and title, copyright**

5.1 If the contractual service involves the manufacture, erection or assembly of a work, risk shall pass upon acceptance and, in the case of delivered goods without erection or assembly, upon receipt by the receiving point specified by LAT AT.

5.2 Upon delivery/acceptance of the ordered goods/work, LAT AT shall acquire direct title thereto.

5.3 In respect of all copyrightable services, the supplier grants LAT AT an exclusive, freely assignable right of use with no restrictions in terms of time and place for all known use types. The complete or partial exercise of the rights, also at a later time, shall not require any further consent of the supplier.

#### **6. Defects**

6.1 LAT AT shall examine the delivered items for patent defects within two weeks of acceptance. LAT AT shall notify the supplier in writing without delay of any defects in the delivery as soon as these are established under the conditions of the due course of business. To that extent, the supplier waives the defence of late notification of defects.

6.2 The issue of receipts and any payments made by LAT AT do not constitute a waiver of claims or rights. Any warranty claims shall survive intact.

#### **7. Prices, payments and offsets**

7.1 The prices stated in the various orders are without value-added tax. They are fixed prices and exclude subsequent claims. Any additional or deviating deliveries or services are only remunerated if a rider or supplementary agreement was concluded in advance.

7.2 The content of an invoice must comply with the applicable provisions of statute. For each order, a separate invoice shall be drawn up. The invoice currency must agree with the order currency. The breakdown of the invoices must mirror the structure of the order. Invoices must contain as reference the order number and the order date. The invoice items must contain as reference the order item numbers as well as the specification and the quantity with single and item price. Where, in an exceptional case, no order exists, at least the department and the name of the orderer at LAT AT must be stated; invoicing in such a case is in Euros. In the event of non-compliance, LAT AT reserves the right to reject the invoice.

7.3 Invoices are sent in a single copy to the following address: Lufthansa Flight Training Austria GmbH, Austrian Airlines Basis, 1300 Flughafen Vienna, Austria.

Payments are made after 14 days subject to 3% discount or after 30 days without deduction. These terms commence as soon as the work or service has been completed and the duly issued invoice has been received by LAT AT. Deduction of a discount is also permissible if LAT AT offsets or retains payments in an adequate amount due to defects. The terms then commence after complete remedy of the defects.

7.4 As a general rule, invoicing shall follow performance of the service and acceptance or clearance of the delivery by LAT AT.

7.5 In any partial deliveries approved by LAT AT, the invoice must contain a remark to that effect.

7.6 Any agreed down payments and services to be offset against down payments shall be marked as such in the invoice.

7.7 The supplier may only perform offsets with undisputed or final claims against LAT AT.

#### **8. Warranty**

8.1 Failing other arrangements, the provisions of statute on warranty shall apply subject to the following provisions: the

warranty period shall commence upon passage of risk (delivery or acceptance). If the supplier's deliveries are inputs for work or services of LAT AT in dealings with third parties, the warranty period shall commence upon delivery or acceptance by LAT AT's client.

8.2 The warranty period shall be extended by such time as the faulty work or service cannot be used as intended.

8.3 To the extent that, within the scope of the warranty, an optional right exists between different forms of subsequent performance, LAT AT shall have such optional right.

### **9. Integrity; environmental and social standards**

9.1 The supplier undertakes to heed the provisions of statute on combating corruption. Specifically, the supplier gives an assurance that it shall refrain from offering, promising or granting LAT AT's employees or persons close to them inadmissible advantages. The same ban applies to the supplier's employees, vicarious agents and other third parties who act on the supplier's instructions.

9.2 LAT AT, as a socially responsible company, acts in compliance with internationally recognized environmental standards as well as the fundamental labour standards of the International Labour Organization as contained in Art. 2 of the ILO declaration dated 18 June 1998 ("Fundamental Principles and Rights at Work") and expects its suppliers to do the same.

9.3 Should LAT AT establish that the supplier infringes one of the standards set forth in items 9.1 or 9.2, LAT AT reserves the right to terminate the agreement concluded with this supplier, if necessary without notice.

### **10. Liability**

10.1 The supplier shall be liable according to the provisions of statute. Specifically, the supplier shall be liable for any damage/loss, incl. consequential loss, incurred by LAT AT from any non-compliant delivery or service, unless the supplier submits evidence that it is not answerable for such damage/loss.

10.2 In its deliveries and services, the supplier shall adhere to the recognized state of the art, recognized safety regulations as well as the relevant accident-prevention, environmental and industrial-safety rules. If these regulations are not heeded, the order shall be deemed not properly fulfilled. LAT AT may claim any resulting damage/loss from the supplier.

### **11. Third-party rights**

11.1. The supplier shall be liable for ensuring that work or services performed are free from any third party rights, unless it is not answerable for the infringement of rights.

11.2. In any infringement as set forth in 11.1 the supplier shall release LAT AT, upon first written demand, from any liabilities that arise from a service being burdened by rights claimed by third-parties, specifically industrial-property rights. The same shall apply to any foreign copyright of which the supplier was aware, or was not aware due to gross negligence.

11.3. LAT AT shall notify the supplier without delay of the assertion of such claims against it. The supplier shall support LAT AT in averting such claims and assume the costs incurred therefore, specifically litigation and lawyer's fees. To the extent that LAT AT has defence measures reserved to it on legal grounds, LAT AT shall be entitled to an advance payment of the estimated defence costs.

11.4. In the event that use of the services performed by the supplier is prohibited by a court decision or if, in the opinion of one party, a lawsuit threatens on the grounds of an infringement of copyright, the supplier shall take remedial action, unless it is not answerable for the infringement. Such remedial action may consist in the supplier obtaining the disputed rights for LAT AT or amending or re-performing its contractual services in a manner that no longer infringes a copyright. Any failure to take remedial action or any resulting lack of success shall entitle LAT AT to rescission.

## **12. Plans, records, drawings**

Any plans, drawings and other records made available shall remain LAT AT's property. They shall be promptly returned once the order is completed.

## **13. Secrecy and data privacy**

13.1. Any contractual and personal data (irrespective of whether in writing, oral or in any other form) are subject to secrecy, viz. even if they are not marked as such. The supplier undertakes to treat in secret such data, unless they are in the public domain anyhow or are expressly intended for publication or are later lawfully obtained from third parties without infringing the terms of the contract.

Any passing on of confidential information to third parties shall require the consent of LAT AT. LAT AT is entitled to pass on confidential information to companies affiliated with it as defined by sec. 15 of Austrian Stock Corporation Act (*AktG*).

13.2. The provisions of statute and operational regulations governing data privacy shall be heeded. The supplier shall impose a corresponding duty on any employees and vicarious agents coming into contact with the contractually owed service and shall hand over to LAT AT the record of such commitment upon request. To the extent that personal data are processed or used by order, the parties shall promptly conclude a data-protection agreement pursuant to the provisions of Austrians Federal Data Protection Act (DSG 2000).

13.3. The supplier undertakes to maintain secrecy in respect of data that became known to it also beyond the end of the contractual relations. The supplier undertakes to return to LAT AT or – at LAT AT's request – to destroy any data and records after this agreement has ended.

## **14. Naming as reference**

The supplier may advertise its business relationship with LAT AT only with the latter's prior consent.

## **15. Intercompany offsets**

LAT AT shall be entitled to offset any claims of the supplier, whether due or not yet due from LAT AT or from a company with which LAT AT is affiliated as defined in sec. 15 *AktG*, with its own claims or with claims of the companies named. A list of companies affiliated with LAT AT as defined in sec. 15 *AktG*, including, in particular, Deutsche Lufthansa AG, Lufthansa Technik AG, Lufthansa Cargo AG and Lufthansa Systems AG, will be sent upon request.

## **16. Applicable law and venue**

16.1 The contractual relations between the supplier and LAT AT are subject to Austrian law without the conflict-of-laws rules, and ousting the UN Convention on the International Sale of Goods (CISG). The contract language is German. If other languages are used, the German wording shall be authoritative.

16.2 The courts at Vienna, Austria, shall have exclusive jurisdiction in any disputes, including proceedings based on documents and bills of exchange, under or in connection with the contractual relations or with the emergence, efficacy or termination of the contract.