

# **GENERAL TERMS AND CONDITIONS OF THE ELITE JET SERVICE GMBH FOR DELIVERIES AND SERVICES CONDUCTED ON AIRCRAFT AND RESPECTIVE EQUIPMENT**

## **Definition**

The consumer is every person who concludes business for some purpose, which is not related to his or her business activity. A trader is every individual or legal person or private company, which is performing a legal transaction while exercising commercial or autonomous actions. Customers could be consumers as well as traders. A purchase of consumer goods is present when the customer is consumer and the subject matter of the business of any sales of movable goods at the same time.

## **1. Order**

1.1 These terms and conditions govern the contractual relationship between customers and Elite Jet Service GmbH for any use for any services including goods delivery as well as execution of any work on aircraft. They shall apply to all business connections with consumers and entrepreneurs. Insofar as these General Terms & Conditions contain provisions that may effectively be established only with entrepreneurs and merchants and are otherwise prohibited by law, such provisions are deemed to have been specifically agreed with such entrepreneurs and merchants. Consumers are subject to applicable legal provisions, with any ineffective provision to be replaced by an effective one that approximates, to the extent possible, the economic purpose of the ineffective provision. We do not acknowledge any terms and conditions of the customer, which differ from or conflict with our general terms and conditions, unless we have expressly confirmed their application in writing. In any case, our responsibility - regardless of the restrictions of liability based on these terms and conditions- for culpable behavior. Regarding contracts, which obtain the acquisition of certain items, especially purchase agreements, we do not assume the procurement risk, provided there is no other contractual commitment.

1.2. If an order was placed with us, we shall also be authorized to carry engine test runs or other measures necessary to check that the work has been carried out properly. Furthermore, after prior consolidation we shall be entitled to conduct any necessary work related to the regaining of airworthiness and/or flight safety, provided the work to be performed is not grossly disproportionate to the original contract. The customer shall give his prior agreement regarding the conduction of test flights if these become necessary and shall ensure all requirements for the operation of these flights (Insurance, internal procedures etc.).

1.3. We shall be entitled to subcontract work commissioned to another business which we believe suitable either in or outside of the Federal Republic of Germany, without any prior notification of the customer being required.

1.4. If the customer is not the owner of the relevant goods, he is obliged to inform us about the owner and upon our request also about his authorization of contract. Until then, we have the statutory rights of retention.

1.5. The customer shall be obligated to accept partial services. This shall not only apply if the partial provided services do grossly harass the customer or put the contract purpose on a risk.

## **2. Cost Estimates**

2.1 Cost estimates are generally non-binding. They are non-binding, unless confirmed by us in writing and specifically designated as binding. Services and deliveries essential for preparing a cost estimate (e.g. disassembly) shall be invoiced to the customer even if the work scheduled in the cost estimate is not performed.

## **3. Prices / Payments**

3.1. The prices and hourly rates as shown in our pricelists effective on the date of conclusion of contract and furthermore usual prices and charges plus value added tax at the respective valid rate, shall apply. If it is agreed that the delivery and service shall be completed more than 3 month after conclusion of the contract, the valid relevant prices at the time of completion shall apply.

3.2. All prices shall be understood to apply ex Mönchengladbach Airport. If services are provided outside the airport, an additional charge according to our travel expenses, shall be charged.

3.3. Payments shall be due immediately and without any deductions. Payments are not deemed to be made unless and until we may fully dispose of the amount in question in the Federal Republic of Germany. Deviations from this require a separate agreement. In case of a repair order, we are entitled to provide partial invoices, which shall be due immediately.

3.4. An Offset against claims shall only be permissible, if those claims are either be declared to be meritorious by unappealable judicial decision or not admitted by us.

3.5. If the customer is a consumer, we are entitled to claim default interests at a rate of 5% above the applicable base rate, unless the customer proves that we suffered a substantially smaller loss. If the customer is a entrepreneur, the interest rate shall be 5% above the applicable base rate. The enforcement of a higher claim for damages caused by delay remains unchanged.

3.6. For material provided by the customer (e.g. devices, units etc.), a handling fee, 10% (max. €10.000,-) according to the valid list price, will be charged, unless the customer proves a different price for the applicable material. In this case, the proven price is decisive for the calculation of the 10% rate. For material provided by aircraft or engine manufacturer (Parts Programs), a handling fee in the amount of 7% of the replacement price, will be charged.

#### **4. Delivery**

4.1. Delivery dates shall be agreed on individual and in writing.

4.2. We shall be obligated to meet an agreed binding delivery date. If additional work is required for the originally order agreed on, the delivery dates will be postponed accordingly.

4.3. For a delivery of the subject matter of the contract to a place other than the place of performance, the customer shall bear the resulting costs.

#### **5. Acceptance**

5.1. The customer shall be obliged to perform a formal acceptance at our request. Acceptance shall in principle be conducted on our yard in Monchengladbach or at the location the service has been provided outside our business premises.

5.2. The ordering party will be in arrears of acceptance if he does not collect the finished subject matter of contract and pay the open invoice within two weeks of being informed of the completion and the issuance of the preliminary or final invoice. The customer shall be charged for the costs and additional expenses e.g. storage costs arising during default.

5.3. Upon the occurrence of the default in acceptance, the risk of accidental deterioration and accidental loss of the goods is transferred to our contract partner.

5.4. If the customer does not perform an acceptance of the subject of contract, we are entitled to demand compensation, after having issued a warning notice and set a appropriate deadline.

#### **6. Transfer of Risk**

6.1. In general the collectable debt remains with the customer. Accordingly, the risk of any accidental deterioration (damage) or demise (total loss) caused by non-affiliated third parties passes to the customer as soon as the subject of contract is handed over or prepared to be ready for acceptance on our business premises.

6.2. Should a delivery agreement exist, risk shall be passed to the customer with the handover of goods to the party carrying out the delivery, irrespective whether delivery is made by us, the customer himself or a third-party.

6.3. In the event the transfer is delayed for reasons attributed to the customer, the risk is transferred to him as soon as the goods in question are ready to be handed over.

6.4. Upon request, we will assign any claim to the customer, it may hold against non-affiliated third parties as a result of any deterioration or demise of the object.

#### **7. Warranties and Deadlines**

7.1. If the customer is consumer, we are liable for all defects of our deliveries and services in accordance with all legal requirements. In case we deliver used goods to the customer, deficiency claims become time barred within one year of the delivery or acceptance. This shall not apply, so far as we did cause a deficiency intentional or grossly negligent or kept secret or life, body or health is threatened due to a simple negligence. Our liability for compensation due to a deficiency shall be determined according to point 7.

7.2. In case of legal transactions with companies, the warranty period for our provided services shall be 1 year. In case we did not produce the subject of contract ourselves or we imported it from a non-EU country, the warranty period is shortened and limited to the warranty period given by the manufacturer. Excluded from the warranty and extended obligations are those deficiencies which are caused by other maintenance operations than us or third parties, due to modification, overhaul or repair within the warranty period, or rather due to Foreign Object Damage (FOD) or force majeure.

7.3. For delivery and/or assembly of used parts "Core Part or as removed Parts", a liability based on warranty is excluded. We are explicitly not liable for the correct function of the part. This shall not apply in case of a fraudulent concealment of a defect.

7.4. Possible warranties granted by the manufacturer shall be applicable additionally to the above stated warranty claims.

7.5. If the customer is a business establishment, he shall have to notify us in writing within two weeks about any apparent defects, non apparent defects within one year after acceptance of the subject of contract, otherwise the assertion of the warranty claim shall be excluded. The customer has the full burden of proof for all pre-requisites for the claim, in particular for the defect itself for the time when the defect is determined and for the timely report of the defect.

7.6. Our obligation and liability is limited initially to the subsequent fulfillment (rectification or replacement delivery), unless this is not associated with disproportionate costs. If the defect is not rectified within a specific period set by the customer or in case a subsequent fulfillment is not possible, the customer shall be entitled to claim his legal rights.

7.7. In general rectification and repairs are only be conducted in our business premises. However, in exceptional cases, we reserve the right to fulfill the contractual works at the customers or other place. However, should a customers demand for repair be proven unjustified, we are entitled to claim compensation for all costs and additional expenses that occurred.

7.8. Warranty claims are due to the customer only and an assignment of the warranty claims to third parties is excluded.

7.9. No warranty claims are present, if the damage is due to normal wear and tear, force majeure, faulty or negligent handling, excessive loads or failure to comply statutory provisions or operating instructions.

## **8. Liability**

8.1. Regarding claims of compensation for the injury of life, body and health we are liable for intentional or negligent misconduct within the scope of the legal obligations.

8.2. Other contractual and/or legal claims of compensation of any kind including for consequential damages are excluded, provided that the damage was not caused by us by intentional or negligent misconduct.

8.3. We shall not be liable for additional items contained in the aircraft, unless such items have been transferred to us specifically for custody and safekeeping.

8.4. The foregoing limitations of liability shall apply, to the full extent, to the executive organs, employees, legal representatives, persons employed in performing an obligation and vicarious agents, whose services are used by us for the performance of the contract.

## **9. Insurance**

9.1. We shall not be liable for a specific insurance for contractual items transferred to us by the customer. The risk for the insurance covering of the contractual item during maintenance and repair shall remain with the customer.

## **10. Reservation of Title**

10.1. We reserve all our proprietary rights for all delivery items, accessories and replacement parts and all exchange units up until full payment of all monies outstanding from the corresponding business relationship. Where such title lapses as a result of combination or mixing or processing, we will become co-owner of and share title to the object with which the object delivered by it has been combined, mixed or which has been generated by processing whereby such co-ownership will be commensurate with the proportion between the values of the object used.

10.2. Unless otherwise agreed with the customer, all exchanged parts will be transferred into our ownership.

10.3. At the written request of the customer, we shall be obligated to release security items at our discretion, provided we do not need those items in order to secure our claims and an excess security of at least 30% is given.

10.4. The customer will receive the delivery object in excellent condition during the period for which we are here entitled to claim the right of ownership and shall have necessary repairs done at his own expenses and without delay, either with us or with another company authorized by us. We shall be entitled to sight the reserved goods at any time.

10.5. The customer shall be obligated to inform us immediately and without delay in case of attachment, seizure, damage or loss of the reserved goods as well as change of ownership and domicile. If the customer substantially infringes upon these obligations, we shall be entitled to withdraw from the contract.

10.6. Without our prior written agreement, the customer is not entitled to have the goods, which are subject to our retention of title, unless this is not within the normal course of business.

Should the customer sell the reserved goods, he hereby assigns us all the accounts receivable arising from the resale to his customer or third parties in the amount of the final invoice amount (including Value Added Tax) that he owes us, irrespective of whether the object of sale is resold without or after processing.

Consent in respect of resale is excluded, if the contract partner and the customer have agreed on an effective prohibition on assignment, according to § 399 BGB. In other respects Section 354a of the German Commercial Code shall apply. The customer shall continue to be entitled to enforce such claims after they have been assigned, however this shall not affect our right to enforce them ourselves. However we commit ourselves not to collect the claim as the customer fulfills his payment obligations, is not in default of payment and, in particular, application has not been made to open insolvency or composition proceedings and cessation of payments has not taken effect.

10.7. Against any claims resulting from the conducted contract, as well as any other open claims from the business relationship, we shall have the right of retention and a contractual lien in addition to the legal lien, on the items that become our property based on the conduction of our contract.

10.8. Besides we shall be entitled to sell the contractual goods on the open market, provided we inform the customer subject to a notice period of 14 days about it. With consumers we shall be entitled to this only if the customer is in delay of at least two agreed rates of payment.

10.9. It is in the responsibility of the customer to insure the reserved goods against damages of any kind, provided the goods contain a value of EUR 2.500 or more. The customer hereby transfers all claims on insurance benefits to us and provides us immediately and without delay with all respective documents for the assertion of these.

10.10. If the customer fails to properly comply with his obligations of payment and any other obligations related to the retention of title, the entire residual debt will be due immediately, also insofar as bills of exchange with a later maturity date are pending.

## **11. Final Provisions**

11.1. If one of the before stated provisions shall be or become ineffective the remaining provisions shall remain unaffected.

11.2. Place of performance is Monchengladbach. Provided that the customer is a full merchant, a legal entity of the public right or a representative of the special public assets, or if the customer has no inland place of jurisdiction, the place of jurisdiction for all claims resulting from this business agreement shall be the District of Vieren. However, we shall also be entitled to take legal action at the general place of jurisdiction of the customer.

11.3. German law shall apply exclusively, even if we conduct contractual work at the location of the customer or any third party airfield. UN Purchase Law shall not apply.

11.4 As in the context of the order contractual documents, appendixes, general terms and conditions or any other documentation have been translated into a foreign language, wholly or partially, in the case of a dispute the German version shall apply.