



**DFS** Deutsche Flugsicherung

## **General Conditions of Purchase of DFS Deutsche Flugsicherung GmbH**

### **I. Application of the conditions of purchase**

1. The contractual relationship between the supplier and DFS Deutsche Flugsicherung GmbH (hereinafter called DFS) shall be governed by these and any other agreements concluded. They do not apply to the performance of construction services.

2. DFS shall not be bound by any general terms and conditions of the supplier that deviate from or supplement these General Conditions of Purchase even if DFS does not explicitly object to them or the supplier asserts that he only intends to supply under his own general terms and conditions or encloses these with his letter of acceptance or with his delivery note or order form. By the same token, the receipt of deliveries and services by DFS or their payment shall not represent the acceptance of the general terms and conditions of the supplier.

### **II. Purchase order and confirmation**

1. Immediately upon receipt, the supplier shall send DFS a written confirmation of the purchase order by returning the form attached to the order.

2. If additional deliveries and services beyond the contractual scope of deliveries and services are required, these will only be provided after the prior consent of DFS (purchase order change). If this procedure is not observed, there shall be no entitlement to receive remuneration for any additional deliveries and services.

### **III. Quality, delivery periods, passing of risk and subcontractors**

1. The supplier shall render the contractually agreed services with the greatest care and conscientiousness according to the generally accepted rules of technology.

2. Agreed dates and periods of delivery shall be binding. Partial and advance deliveries shall only be permitted with the prior consent of DFS. If the supplier fails to meet the delivery periods, DFS shall – without prejudice to other legal claims – have the right either, following an unheeded reminder, to claim delivery and damages because of late delivery or damages instead of performance or, following a suitable grace period, to withdraw from the contract and claim damages. The supplier shall inform DFS immediately about circumstances that may lead to delays in delivery and designate a new delivery date or a new delivery period. The previously mentioned consequences for delayed delivery shall not be revoked by naming new dates.

3. In the case of deliveries, the place of performance is the place of destination of the delivery. The risk shall pass to DFS at the time of taking

delivery at the place of destination. In the case of deliveries involving assembly services, the risk shall pass to DFS with the acceptance.

4. The supplier may only engage third parties (such as subcontractors) to perform his duties with the prior written permission of DFS.

### **IV. Shipment, packing and acceptance of goods**

1. The delivery notes shall be attached to the outside of the package and shall contain the DFS order number, item designation with part number, quantities, delivery address as well as information on possible partial deliveries. Deliveries consisting of several packing units shall be marked as belonging together. The order number and the labelling required by DFS shall be given in all relevant documents. The items destined for shipment shall be suitably packed in keeping with their specific nature and shall be protected against damage. DFS shall have the right to request that the supplier take back the packing at no additional cost to DFS. The supplier shall ensure disposal of packing in compliance with the pertinent legal provisions and ecological requirements.

2. If the order does not require a specific mode of shipment, the most economical mode shall be chosen. Any additional costs resulting from non-compliance with the above provisions shall be borne by the supplier. Goods shall be delivered exclusively to the place of delivery and performance specified in the order. Deliveries including unloading shall only be carried out on workdays from Monday to Friday between 8:00 hrs and 15:00 hrs (Friday 14:00 hrs), and by appointment outside of these hours.

3. If the inspection and defect reporting obligation under Section 377 *Handelsgesetzbuch* (HGB – German Commercial Code) applies, this shall be restricted to evident and easily identifiable defects.

### **V. Special issues for services**

The supplier shall render the services by himself and on his own responsibility in consultation with the responsible contact person for the issue at DFS. The supplier is free to decide on where the performance is rendered and how to structure his working time unless the duties require his presence at a particular location or at a particular time. In any case, the supplier shall coordinate place and timing with DFS. Staff responsibility, the right to give issue-related instructions under labour law as well as the structuring and conduct of the supplier's staff deployment shall remain exclusively with the supplier.

## **VI. Prices, invoices and payment**

1. The prices given in the orders shall be deemed as contractually agreed and shall be exclusive of value added tax but inclusive of carriage, packing and return/disposal of packing, unless otherwise agreed. The final invoice shall be marked as such. Payment shall be effected in net terms within 30 days of receipt (receipt stamp) of all documents substantiating payment, unless otherwise specified in the order. In the case of defective deliveries/services, DFS shall be entitled to retain part or all of the payment until the contract has been duly fulfilled.

2. DFS shall be entitled to offset the supplier's receivables that are due or not due with DFS or one of its affiliated companies within the meaning of Section 15 of the German Stock Corporation Law (*Aktiengesetz, AktG*) (DFS Aviation Services GmbH, R. Eisenschmidt GmbH, Kaufbeuren ATM Training GmbH, DFS International Business Services GmbH) with its own receivables or receivables of the above-mentioned affiliated companies.

3. The supplier shall only be entitled to offset, retain and/or refuse performance in accordance with Sections 320, 273 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*) if these claims are undisputed, recognised by DFS and/or have been legally established or if they are counter-claims from the same contractual relationship.

## **VII. Acceptance of work**

The supplier shall inform in writing of the completion of a work performance and request the acceptance. If there is a defect in quality or title (legal), DFS reserves the right to refuse acceptance. This does not apply to immaterial defects, if and to the extent that the supplier recognises his obligation to rectify the defect.

## **VIII. Warranty**

1. The warranty period shall be 24 months after confirmation that the deliveries/services supplied are non-defective, unless otherwise agreed or a longer warranty period is stipulated by law.

2. Upon receipt of the written notice of defects, the statutory limitation of warranty claims is inhibited until the supplier rejects the claims of DFS or declares that the defect has been eliminated, or otherwise rejects the continuation of negotiations concerning the claims of DFS.

3. The supplier shall pay all costs (especially carriage) incurred for remedying defects under a warranty.

## **IX. Liability**

1. The supplier shall be liable for all damage arising to DFS from any non-contracted deliveries

and services rendered by the supplier. The supplier shall prove that he is not responsible for the breach of duty.

2. The supplier shall assure that the goods supplied are free from third-party rights. The supplier shall indemnify DFS against all liabilities arising from the fact that delivered goods or parts thereof are encumbered with third-party rights, particularly with rights regarding the protection of domestic and foreign industrial property or copyright. In the cases of non-culpable liability, this applies only if the supplier is at fault. If the cause of the damage lies within the responsibility of the supplier, the supplier shall bear the burden of proof that he is not at fault.

3. If any third party makes a claim against DFS because of damage for which the supplier is at fault the supplier shall indemnify DFS against all claims resulting from such damage.

4. The supplier shall ensure that he is sufficiently insured to cover potential claims for compensation made by DFS. DFS may require the supplier prove that sufficient insurance coverage is in place.

5. DFS shall only be liable in the case of intent and gross negligence. This does not apply to damage arising from injury to life, body or health, the violation of material contractual obligations or to claims arising under the German Product Liability Act (*Produkthaftungsgesetz, ProdHaftG*). There shall be no liability for damage caused by ordinary negligence. This does not apply to damage arising from injury to life, body or health or to claims arising from the German Product Liability Act (*ProdHaftG*). Nor does it apply to damage resulting from breaches of contractual obligations which must be fulfilled if the contract is to be duly and reliably fulfilled and the fulfilment of which the contract parties typically rely on (material contractual obligations). In the case of violation of these material contractual obligations due to ordinary negligence, the liability shall be limited to the contractually anticipated and direct damage. DFS shall be liable for parties acting on its behalf in accordance with this regulation.

## **X. Contractual penalty**

If the supplier falls behind schedule, DFS can demand a contractual penalty of 0.5% of the net price of the delayed performance for each completed calendar week. In total, this amount shall not exceed 5% of the net price of the delayed goods. DFS shall be entitled to demand the contractual penalty in addition to the fulfilment and damages owed by the supplier under the statutory provisions as the minimum amount. The assertion of additional damages is not excluded. However, the contractual penalty will be offset against such claims for damages. If DFS accepts

the delayed performance, the contractual penalty shall be applied to the final payment at the latest.

#### **XI. Rights of use**

The supplier shall grant DFS the exclusive, transferable and fully sub-licensable right to use the work results, in particular project concepts, presentations and drafts, at the time of their creation for all known types of use, particularly the right of duplication, distribution, utilisation and processing, without spatial, temporal or content restrictions.

#### **XII. Duration**

Unless otherwise agreed, service contracts shall end when the complete service has been rendered without the need for special notice to be given. The statutory notice of termination of the contract shall be equal to six months from the end of the month.

#### **XIII. Minimum wage**

The supplier shall undertake to adhere to all obligations resulting from the German Minimum Wage Act (*Mindestlohngesetz*, MiLoG). With regard to the staff employed to fulfil this contract, this means, in particular, to pay them at least the minimum wage laid down in Section 1(1) of the Minimum Wage Act (MiLoG) for the activity of this person or, in case a different collective agreement applies to the staff employed within the meaning of Sections 1(1) and 24(1)(1), at least the minimum wage laid down in the valid version of this collective agreement, no later than at the stipulated due date. If DFS seeks recourse under Section 13 of the Minimum Wage Act (MiLoG), the supplier shall undertake to bear all costs incurred and shall pay for any infringement of the obligations mentioned above culpably caused by himself, a subcontractor or a company contracted by the subcontractor a contractual penalty amounting to 1% of the net order value - based on the order value at the time of commissioning. The total, however, shall not exceed 5% of the above-mentioned net order value. Further claims for damages shall remain unaffected; however, the contractual penalty shall be set off against this. If the supplier or a subcontractor violates any provisions of the Minimum Wage Act (MiLoG), DFS shall have the right to issue an extraordinary termination to this contract within two weeks after this fact has become known to the customer without observing a notice period.

#### **XIV. Data protection, confidentiality, references**

1. In accordance with the relevant regulations governing data protection, DFS herewith informs the supplier that DFS itself or if necessary its investments (subsidiaries) may store personal data concerning the supplier obtained within the scope of the contractual relationship.

2. Any information obtained concerning DFS shall not be passed on to third parties or be otherwise used without the written permission of DFS. The supplier shall undertake to process all surrendered records, documents and data stored on data storage devices exclusively for the purpose of rendering the contractually agreed performance. These – together with any copies – shall be automatically returned to DFS at the latest at the time the contractually agreed performance has been fulfilled or be permanently deleted without delay. If so requested by DFS, the supplier shall provide an appropriate declaration to this effect. These obligations apply for an indefinite period.

3. The supplier may only advertise its business relationship with DFS with the prior written permission of DFS.

#### **XV. Choice of applicable law and place of jurisdiction**

The legal relations between DFS and the contractor shall be subject to the law of the Federal Republic of Germany and exclude the provisions of the United Nations Convention on Contracts for the International Sale of Goods. The place of jurisdiction shall exclusively be Frankfurt am Main, Germany. However, DFS shall also be entitled to bring an action at the general place of jurisdiction of the contractor.

#### **XVI. Miscellaneous**

1. Any contract amendments and/or supplements shall be made in writing. They shall be marked expressly as amendments and/or supplements. The same applies to the cancellation of the requirement of the written form. E-mails are not deemed to be legally binding unless otherwise expressly agreed in individual cases.

2. If parts of the order are or become invalid, this shall not affect the effectiveness of the remaining parts of the contract. The contracting partners are obliged to replace the invalid regulation with a provision that comes closest with respect to its economic result. The same applies in the event of omissions.