

## **General Terms of Delivery** **Airex AG, 3A Composites Mobility**

### **1. General**

1.1 These Terms and Conditions of Sale and Delivery apply to all deliveries by 3A Composites Mobility, Altenrhein, Switzerland, a business unit of Airex AG (hereinafter „Airex“), to the exclusion of the general terms and conditions of the Customer and subject to any diverging written agreements.

1.2 The Agreement shall be concluded with the receipt of the written order confirmation by Airex that accepting the order (order confirmation). Offers by Airex, which do not contain any acceptance deadline, are non-binding.

1.3 All further agreements made between Airex and the Customer (collectively the “Parties”) for the purpose of executing orders must be made in writing.

1.4 The transmission of agreements or legally significant statements through electronic means is equal to a written form, unless the Parties have expressly excluded such transmission procedure.

### **2. Scope of the Goods and Services**

2.1 The scope of the goods and services of Airex is conclusively specified in the order confirmation of Airex together with possible enclosures thereto. Materials or services which are not contained therein shall be invoiced separately by Airex.

2.2 Unless agreed otherwise between the Parties, Airex is entitled to make part deliveries

### **3. Technical Documentation, Projects and Preliminary Studies**

3.1 All technical and/or commercial details, information, know-how etc. of Airex entrusted or made accessible to the Customer must be handled strictly confidentially and may not be passed on to any third party without the written consent of Airex. This confidentiality provision shall remain in force for the period of 10 (ten) years, irrespective of the duration of the delivery agreement.

3.2 Projects and preliminary studies, including the production of samples and prototypes, which are developed by Airex at the request of the Customer shall remain property of Airex and without written consent by Airex may neither be copied or reproduced, nor supplied to any third party or made accessible in any other way to any third party, nor may these be used to manufacture the works or components thereof.

### **4. Regulations in the country of destination and safety features**

Unless otherwise agreed, the goods and services of Airex comply with the regulations and standards applicable at its domicile. Further or other safety regulations shall only be taken into account to the extent that this has been expressly agreed. It is the responsibility of the Customer to raise awareness about any safety regulations in the country of destination.

### **5. Prices**

5.1 Unless otherwise agreed in writing all specified prices are shown net, ex works (EXW according to INCOTERMS 2010), excl. packaging, excl. any deductions. The Customer shall bear all types of taxes, duties, fees, customs and similar which are levied in conjunction with the Agreement.

5.2 The prices of Airex are based on the exchange rates, raw material prices, salaries, freight cost and customs duties applicable at the date the offer is issued. The right to adjust prices in the event of unforeseen and significant changes in production costs (e.g. material, energy and personnel costs, transportation costs and public duties) by the time of the conclusion of the agreement or during the term thereof remains reserved.

### **6. Terms and Conditions of Payment**

6.1 The payments must be performed in accordance with the agreed terms and conditions of payment at our legal domicile without the deduction of cash discounts, rebates, expenses, costs, taxes, duties, fees, customs and similar charges. In the case of partial deliveries, the payment must be performed in accordance with the extent of the individual delivery. The payment obligation shall be deemed to have been fulfilled when the respective funds in cash have been credited to Airex' bank account at its free disposal.

6.2. The dates and deadlines indicated in Airex' invoices are due dates. In case of exceedance of such due dates the Customer will automatically be in default without reminder or extension of time given.

6.3 Should the Customer fail to adhere to the agreed payment deadlines, then he shall automatically be obliged to pay interest from the time of the agreed due date of payment amounting to 4% above the 3 months CHF-LIBOR. Compensation for further damage remains expressly reserved.

### **7. Reservation of Title**

7.1 The Supplier shall retain the title to his delivery until this has been paid in full. After conclusion of the contract Airex is authorised by the Customer to take all legal measures necessary to secure the reservation of title, particularly the registration of the reservation of title in public books or register. The Customer will support Airex for all measures to secure our property. The Customer shall at all times be obliged to contribute to those measures which are required to protect the property of Airex, and must report without delay any changes of domicile or headquarters to Airex.

7.2 The Customer shall exercise the possession of the reserved-title goods for Airex as custodian with due commercial care and has the obligation to insure the reserved-title goods against theft, weather related perils and other risks, and to take such measures necessary to ensure title is neither impaired nor rescinded.

7.3 To secure the relevant claims of Airex under Para. 7.1, the Customer already now assigns to Airex all receivables from the sale of reserved-title goods, including bills of exchange and cheques. In the event of default in payment, general cessation of payments or if the Customer has filed a petition for the commencement of insolvency proceedings, the Customer must, at the request of Airex, notify his customers of the assignment, carried out in accordance with Para. 7.3, and provide Airex with all necessary information and take all measures to secure Airex' rights. In particular, Airex must be notified immediately of any attachment by creditors of the reserved-title goods or the receivables assigned to Airex.

## **8. Delivery Period**

8.1 The delivery period shall commence as soon as the Agreement has been concluded, all official formalities have been met, the payments and any possible sureties required to be rendered at the time of the placement of the order have been performed, as well as the essential technical aspects have been clarified. The delivery period shall be deemed to have been adhered to if the Customer has been informed about the dispatch readiness prior to its expiry.

8.2 If the Customer fails to perform contractual duties – including duties of co-operation and ancillary duties – in good time, Airex is entitled to extend its delivery periods and dates in accordance with the requirements of its production process, and to claim compensation for any damages Airex may have suffered, including any additional expenses incurred, without prejudice to its rights out of the Customer's default.

8.3 The delivery period shall be reasonably extended if the details which Airex requires for the purpose of fulfilling the Agreement are not sent to Airex in good time, or if the Customer amends these retrospectively, thus causing the deliveries or services to be delayed.

8.4 Even with an agreed delivery date Airex' delivery will only be deemed delayed following a written reminder. In the event of delayed delivery, the Customer must notify Airex within a reasonable period of time whether he intends to withdraw from the contract or insists on delivery. Article 12 applies mutatis mutandis to the Customer's claims to compensation for damages arising from a delay in delivery for which Airex is deemed responsible.

## **9. Transfer of benefit and risk**

The benefit and risk shall be transferred to the Customer in accordance with the agreed delivery clause (INCOTERMS 2010).

## **10. Dispatch, transport, packaging and insurance**

10.1 The Customer must report any complaints associated with the dispatch or transport to the last freight carrier without delay following receipt of the delivery or the freight documents.

10.2 The packaging shall be invoiced separately by Airex, and shall not be taken back. However, if it is declared to be property of Airex, or if Airex is obliged to take the packaging back on the grounds of any official decree or statutory regulations, then the Customer must return it post paid to the place of origin.

10.3 The Customer shall be responsible for taking out insurance against any damage of any kind. Even if Airex is responsible for taking out the insurance, this shall be performed on behalf of and on the account of the Customer.

## **11. Warranty**

11.1 Unless otherwise agreed in writing, the warranty period is 12 months. This shall begin at the time of the dispatch of the goods from the works, or with the possibly agreed acceptance of the goods or services or, to the extent that Airex has also performed the assembly at the external location, with the completion of the assembly works. With respect to replaced or repaired parts, the warranty period shall commence anew.

11.2 The Customer must check immediately after receiving the goods whether such goods have the contractually agreed characteristics. Obvious defects must be notified to Airex and evidenced within two weeks, non-recognisable defects without delay after discovery, but within twelve months of receipt of the goods at the latest. Obvious transport damage must be notified to Airex without delay together with a confirmation by the transport company.

11.3. Warranted characteristics constitute only those characteristics which are designated as such in the specifications. The maximum period for the application of any possible warranted characteristics shall be up to the expiry of the warranty period.

11.4 If the warranted characteristics are not or are only partially fulfilled, then the Customer shall first be entitled to prompt defect rectification, which at the option of Airex may be performed through elimination of the defect (repair) or the delivery of an item without defect (replacement). In this conjunction, the Customer must grant Airex the necessary time and opportunity. Should this defect rectification not prove successful or not prove wholly successful, then the Customer shall be entitled to a reasonable reduction in the price. If the defect is so serious that it cannot be remedied within a reasonable period, and if the goods or services cannot be used for the declared purpose or only to a significantly limited extent, then the Customer shall be entitled to refuse to accept the defective part or, if the acceptance of a part would be economically unreasonable, to withdraw from the Agreement. In this conjunction, Airex can only be obliged to reimburse the sums which were paid to it with respect to the parts affected by the withdrawal.

11.5 Claims may not be brought for goods which have already been processed, falsely utilised or falsely stored. The same shall apply in the event of the Customer not having without delay taken suitable measures to minimise any damage.

11.6 Airex shall not provide any guarantee for third-party deliveries.

11.7 Unless otherwise stipulated in Article 12, any further warranty claims for defects on the part of the Customer - regardless of their basis in law - are excluded.

## 12. Limitation of Liability

12.1 Airex is liable for damages suffered by the customer due to the absence of a warranted characteristic as well as claims based on initial inability or impossibility for reasons imputable to Airex.

12.2 The liability of Airex is limited to compensation of the typically foreseeable damage.

12.3 Technical advice and recommendations by Airex, if any, are based on an adequate examination but do not imply any contractual commitment. Any liability on the part of Airex is thus excluded.

12.4 Airex is not liable for errors as a result of inadequate information provided by the Customer or incorrect or faulty releases of drawings or test specimens. The Customer's duties of care include the examination of the offered products for their suitability for the intended application and use.

12.5 All cases of contractual breaches and their legal consequences as well as all claims brought by the Customer, irrespective of the legal grounds upon which these are brought, are definitively regulated by these Conditions. Under no circumstances shall the Customer be entitled to compensation for damage not suffered directly by the object of the delivery itself, such as specifically production outages, utilisation losses, loss of orders, loss of earnings as well as other indirect or direct losses.

12.6 This limitation of liability does not apply to unlawful wilful intent or gross negligence on the part of Airex, although it does also apply to unlawful wilful intent or gross negligence of vicarious agents. Incidentally, this exclusion of liability does not apply if excluded by mandatory law.

## 13. Assembly

In the event of our also taking on the assembly or supervising the assembly works, then this shall be governed by the General Assembly Conditions [allgemeine Montagebedingungen] issued by the The Swiss Mechanical and Electrical Engineering Industries Association of Swiss Machine Industries (SWISSMEM)].

## 14. Tools

14.1 Tools and moulds of all kinds which are not made available by the Customer shall under all circumstances be property of Airex.

14.2 The tools and moulds shall be used exclusively for the orders of the Customer. Unless otherwise agreed in writing, 50% of the share of the tool and mould costs which are payable by the Customer shall be payable at the time of the placement of the order, the remainder at the time of the presentation of the technical-drawing compliant outturn samples and moulds.

14.3 Tools and moulds shall be stored with due care for any subsequent orders by the Customer for a period of 2 years following the last series delivery. At the request of the Customer, these shall continue to be stored and cared for at his expense for a further period of maximum 2 years. After the period of 4 years has passed following the last series delivery, all storage and care obligations shall lapse.

## 15. Force Majeure

Airex shall not be liable for the non-performance of the contractual obligations caused by force majeure. Force majeure comprises all hindrances which lie beyond the control of the Supplier, irrespective of whether these occur at the works of the Supplier, at the Customer or at a third party. Such hindrances include, for example, epidemics, mobilisations, war, commotions, serious disruption of operations, accidents, industrial conflicts, delayed or faulty delivery of the necessary raw materials, semi-finished or finished goods, raw material shortages, the rejection of important work pieces, official measures, and natural events.

## 16. Partial Invalidity

Should individual clauses of these General Terms of Delivery be wholly or partially invalid, then this shall not affect the validity of the other clauses or the other parts of such clauses and the validity of the Agreement. An invalid provision shall be deemed to be replaced by an arrangement that is valid and that approximates as closely as possible to the original commercial purpose.

## 17. Place of Performance, Jurisdiction and Applicable Law

17.1 **Place of performance and exclusive place of jurisdiction for all disputes is Altenrhein, Switzerland.** Airex shall however also be entitled to conduct legal proceedings against the Customer at his domicile.

17.2 The legal relationship is governed by material Swiss law, whereby the UN Sales Convention on Contracts for the International Sale of Goods of 11 April 1980 shall be excluded.

**VERSION 10/2018**