

# APOC Aviation General Terms and Conditions of Sale

## 1. Scope 1.1

These General Terms and Conditions of Sale shall apply to all business relationships of Aircraft PartOut Company Europe BV (KVK 61214442 hereinafter called "APOC"), with their customers (hereinafter called "client"). Contract Language shall be English.

## 1.2

These General Terms and Conditions of Sale shall apply also to any future contracts in terms of delivery and services with the same client in their respective version, without APOC being obliged to indicate the General Terms and Conditions of Sale in each individual case.

## 1.3

Any deviating, conflicting or supplementing general terms and conditions of the client shall only be considered part of the contract, if APOC has confirmed them explicitly in writing.

## 1.4

Any individual arrangements made with the client in the individual case shall be in writing to be effective. Legally binding declarations and notifications to be provided by the client to APOC after concluding the contract (e.g. imposing deadlines, notifications of defect, revocation or price reduction) shall also be given in writing to be effective.

## 1.5

The client shall commit himself, if required, to provide in due time and free of charge any data and materials that may be necessary for the preliminary work. If the provisioning of data or materials as agreed by the client is delayed, then any fixed agreed dates of delivery by APOC shall also be delayed accordingly.

## 2. Quotations – confirmation of orders 2.1

APOC may revoke quotations that have not expressly been made binding for a specified period until APOC has received an unqualified acceptance from the customer.

## 2.2

In the absence of statements to the contrary, a quotation shall be deemed to have lapsed thirty (30) days after the date of such quotation.

## 2.3

Any agreement on delivery shall only be binding to APOC when the Buyer has received the written order acknowledgement of APOC and only on the conditions contained therein.

## **2.4**

APOC shall not be liable for any claims, losses or damages of any nature whatsoever, including consequential losses, loss of production, loss of profits or other indirect losses which the Buyer may suffer as a result of any failure, delay or partial imperfect performance in connection with messages, including quotations and/or order confirmations exchanged via electronic networks.

## **3. Offers and conclusion of contract 3.1**

The contract shall only be considered concluded, if the purchase order has been confirmed by APOC. The written confirmation by APOC shall be the determinative factor for the content of the contract. All offers by APOC shall be non binding and noncommittal, unless explicitly marked as binding or containing a fixed term of acceptance. APOC shall be allowed to accept purchase orders or orders within a period of 14 days after receipt.

## **3.2**

The contract concluded in writing, including these General Terms and Conditions of Sale, shall be the sole determinative factor defining the legal relationship between APOC and the client. Any verbal commitments made by APOC prior to concluding the contract shall be legally unbinding and verbal agreements of the contracting parties shall be replaced by the written contract, unless the fact arises from them that they continue to apply bindingly. Supplements or changes to the agreements as well as to these General Terms and Conditions of Sale shall be made in writing to be effective. To comply with the obligation of written documentation, the transmission by telefax shall be considered sufficient. Any other type of transmission by telecommunication, in particular by email, shall be considered insufficient.

## **3.3**

Details provided by APOC pertaining to the delivered item or performed work (e.g. weights, measurements, tolerances, technical data, etc.) as well as any depictions of these (e.g. drawings and illustrations) shall be considered only an approximation, unless an exact conformity is required to fulfil the contractually intended purpose. They shall not be considered guaranteed properties of quality, but only a description and characterization of the delivered item or performed work. Any customary variances and variances that result from legal provisions or technical improvements, as well as the replacement of parts by parts of similar value shall be acceptable, unless said variances compromise the usability for the contractually intended purpose.

## **3.4**

APOC shall reserve its ownership rights or copyright with respect to all its issued offers and cost estimates as well as any drawings, illustrations, calculations, etc. provided to the client. The client shall not disclose these items to a third party, publish or utilize these items himself or through a third party nor copy these as such nor in content, without prior written consent by APOC. Upon request by APOC, the client shall be obliged to return these items completely to APOC and to destroy any produced copy, if he does not require them himself any longer for a proper business transaction or if negotiations did not result in concluding a contract.

## **4. Export**

A potentially required export license with regard to the country of destination is available for all goods that APOC delivers under this agreement. Changes regarding the country of destination may be prohibited or may require a respective export license under the applicable export control regulations. The client shall be liable for all changes regarding the country of destination and shall be responsible for obtaining the relevant permissions.

## **5. Prices and payments 5.1**

The prices shall apply to the scope of services and the scope of delivery as described in the order confirmation. Any additional or special services shall be charged separately. All prices are stated in Euro (unless explicitly agreed otherwise) ex works, plus packaging, applicable value added tax, customs duty for exports, as well as fees or other public charges.

### **5.2**

If the agreed prices are based on APOC list prices, then these shall apply to the entire current business year (e.g. 20140101 until 20141231). Any potential increases in price shall be borne by the client, subject to general increases in price by APOC's manufacturers or suppliers.

### **5.3**

All invoicing amounts shall be paid within 15 days without deduction, unless explicitly agreed otherwise in writing. Determinative factor for keeping that due date shall be the date of receipt on the accounts of APOC. Checks and promissory notes shall be considered a payment only after discharge, whereas any resulting additional costs shall be borne by the client. After the passing of the due date, an annual interest rate for default in the amount of eight percentage points above the applicable prime rate shall be charged. Claiming any additional damages due to default shall be reserved.

### **5.4**

In principle, the client shall not be entitled to cancel a purchase order. The client shall only be entitled to cancel a purchase order after express consent by APOC in writing. However, any relevant expenditure for cancelation shall be charged to the client.

### **5.5**

In the event that the Buyer fails to effect payment punctually, penalty interest at the rate of 1.5% per month shall be charged from the due date.

## **6. Delivery and term of delivery 6.1**

Any deliveries shall be carried out ex manufacturer's works, ex place of business of the contracting partner of APOC or directly ex place of business of APOC itself.

### **6.2**

Any terms or dates of delivery promised by APOC for the delivery of goods or services rendered shall be considered nonbinding, unless a fixed term or a fixed date has been explicitly agreed in writing. If shipment has been agreed, then the term of delivery and dates of delivery shall refer to the time of handover to the transport company, freight forwarder or any other third party charged with the transport.

### **6.3**

APOC shall be entitled, without prejudice to the rights resulting from defaulting of the client, to request an extension of the term of delivery and service dates or the postponement of the delivery and service dates by that amount of time, by which the client fails to comply with his contractual obligations towards APOC.

## **6.4**

APOC shall not be held liable for the impossibility of delivery or for delivery delays resulting from force majeure or other unforeseeable events at the time of conclusion of the contract (e.g. disruptions of operations of any kind, difficulties in procuring material or energy, delays in transport, strikes, legal lockouts, lack of energy or raw material, difficulties in procuring necessary permissions by government authorities, any actions taken by government authorities, lack of, incorrect or delayed delivery by suppliers) that are beyond the control of APOC. If such events make the delivery or rendering a service more difficult or impossible to APOC and the obstruction is not of a temporary nature, then APOC shall be entitled to cancel the contract. If the obstructions are of a temporary nature, then any terms of delivery or terms of service shall be extended or postponed by the amount of time of the duration of this obstruction plus an adequate restart time. The client shall be entitled to cancel the contract by sending a statement in writing to APOC without delay, if the delay causes the acceptance of the goods to become unreasonable for him.

## **6.5**

APOC shall be entitled to partial deliveries, if

- the client is able use the partial delivery within the limits of the designated purpose agreed in the contract,
- the delivery of the remaining part of the ordered goods is ensured and
- this partial delivery does not incur any substantial additional work or additional expenditures for the client (unless APOC declares the acceptance of any such expenditures).

## **6.6**

In the event of APOC being in default with a delivery or a service or should it become impossible for APOC to deliver the goods or service, then the liability of APOC for indemnification shall be limited by the provisions of § 9 of these General Terms and Conditions of Sale, irrespective of the reason.

## **7. Passing of risk, shipment, packaging, acceptance**

### **7.1**

The risk shall pass on to the client latest at the point of handover of the goods to be delivered from the custody of APOC for the purpose of transport. This shall apply also if the client as charged APOC itself with the transport. This shall apply also in the event of partial deliveries or if APOC has agreed to accept other services (e.g. shipment). In the event of the shipment or handover of the goods being delayed due to reasons under control of the client, then the risk shall pass on to the client on that day on which the goods to be delivered are ready for shipment and APOC has notified the client accordingly.

### **7.2**

The shipping method and packaging are subject to the dutiful judgment of APOC.

### **7.3**

Storage costs after the passing of risk shall be borne by the client. In the event of storage by APOC, the storage costs shall amount to 0.25% of the invoiced amount of the goods to be stored for each elapsed week. The right to claim and to prove any additional or lower storage costs shall be retained.

### **7.4**

APOC shall insure the shipment against theft, breakage, transport, fire, and water damages or any other insurable risk only upon express written request by the client and at the expense of the client.

## **7.5**

If APOC requires the acceptance of the goods as a prerequisite for payment, then the purchased goods shall be deemed accepted, if

- APOC has notified the client accordingly by indicating the deemed acceptance according to § 6.6 and has requested the client to accept the goods,
- a period of seven working days has passed since the delivery or the client has started to use the purchased goods (e.g. has put the delivered equipment or goods into operation). In this event six working days have passed since delivery of the goods, and
- the client has not effected acceptance within this period of time for any reason other than a notification of a defect that will render the use of the purchased goods impossible or substantially compromise them. A potential return of the purchased goods shall be subject to the consent by APOC in writing.

## **8. Retention of title 8.1**

The following agreed retention of title shall serve to secure all existing current and future accounts receivable by APOC against the client, resulting from the existing business relationship between both parties.

### **8.2**

The goods delivered to the client by APOC shall remain the property of APOC until full payment of all secured accounts receivable. The goods as well as the goods placed under the retention of title according to this article shall be called goods subject to retention of title.

### **8.3**

The client shall be entitled to process, install or sell the goods subject to retention of title in a proper business transaction until an enforcement event (section 8.7) occurs. Pledging or transferring by way of security of the goods shall be prohibited.

### **8.4**

If the goods subject to retention of title are processed by the client, then it shall be agreed that the processing shall be on behalf and on the account of APOC as the manufacturer and that APOC shall acquire ownership or – if the material of several owners is processed and the value of the processed product is higher than the value of the goods subject to retention of title – the co ownership (fractional ownership) of the newly created product in proportion to the value of the goods subject to retention of title compared to the value of the newly created product. In the event of no such acquisition of ownership by APOC occurring, the client shall with immediate effect transfer his future ownership rights or – in the aforementioned proportion – co ownership rights of the newly created product to APOC by way of security. If the goods subject to retention of title are combined or inseparably mixed with other products to become a uniform product, and if one of the other products is considered the main product, then APOC shall transfer the co ownership of the uniform product to the client in the proportion as provided in clause 1, if the main product is the property of APOC.

### **8.5**

In the event of a resale of the goods subject to the retention of title, the client shall with immediate effect transfer the resulting accounts receivable against the purchasing party – or the co ownership rights of APOC of the goods subject to the retention of title in proportion to the co ownership – to APOC by way of security. The same shall apply to any accounts receivable that replace the goods subject to retention of title or result otherwise with respect to the goods subject to retention of title, such as insurance claims or claims resulting from unauthorized acts in the event of loss or destruction.

APOC shall revocably authorize the client to collect any accounts receivable transferred to APOC on behalf of himself on the account of APOC. APOC shall only be allowed to revoke this authorization if an enforcement event occurs.

## **8.6**

In the event of a third party taking hold of the goods subject to retention of title, especially due to garnishment actions, then the client shall inform this party without delay of the ownership rights of APOC. The client shall also inform APOC of this to allow APOC to enforce its ownership rights. If the third party is unable to compensate APOC for the resulting judicial and extrajudicial costs, then the client shall be liable to compensate APOC.

## **8.7**

If APOC cancels the contract (enforcement event) due to activities of the client violating the terms of contract – in particular defaulting in payment – then APOC shall be entitled to demand the return of the goods subject to retention of title.

## **8.8**

If applicable law of the jurisdiction in which the goods subject to retention of title are located does not permit a retention of title, but permits to retain similar rights to the delivered goods, then APOC herewith declares to exercise these rights. The client shall commit himself to cooperate in completing any potentially required formalities.

## **9. Warranty**

### **9.1**

APOC shall grant the client a warranty equivalent to the warranties that APOC itself is granted by its contracting partners (e.g. usual manufacturer guaranty or repair guaranty).

### **9.2**

The delivered goods shall be inspected thoroughly by the client or, in the event of a delivery to a third party specified by the client, by that third party immediately after delivery. The goods shall be deemed accepted, if APOC does not receive a notification of defect in the way provided in § 5.2, pertaining to any obvious defect or any other defect, that would have been recognized upon an immediate and thorough inspection of the goods, within seven working days after delivery of the goods, or else within seven working days after discovery of a defect or the period in which the defect would have become apparent to the client without closer inspection upon regular use of the delivered goods. The rejected goods shall be returned to APOC carriage paid upon request by APOC. If the notification of defect has been justified, then APOC shall compensate the costs for the most favorable dispatch route; however this shall not apply if the costs are increased due to the delivered goods being at a location other than the location of their designated use.

### **9.3**

In the event of a defect of quality of the delivered goods, APOC shall be committed and entitled to the rectification of the defect or replacement of the goods by choice of APOC within a reasonable period of time. If the rectification of the defect or replacement of the goods is unsuccessful, e.g. impossible, unreasonable, refused or unreasonably delayed, then the client may cancel the contract or reasonably reduce the purchasing price.

#### **9.4**

Should the defect be due to a fault on the side of APOC, then the client may claim indemnification based on the requirements as provided in § 11.

#### **9.5**

In the event of defects of parts of other manufacturers, which APOC may not rectify due to license rights or other actual reasons, then APOC shall by its own choice exercise its own warranty rights against the manufacturers and suppliers on account of the client or assign the warranty rights to the client. Warranty claims for such defects against APOC shall exist only based on the other requirements and by the provisions of these General Terms and Conditions of Sale, if the legal enforcement of the aforementioned claims against the manufacturer and the supplier have been unsuccessful, or is futile, for instance due to insolvency. The statute of limitations of the respective warranty claims of the client against APOC shall be suspended for the duration of the lawsuit.

#### **9.6**

Warranty shall not apply, if the client modifies the delivered goods without authorization by APOC or allows a third party to modify them, thus rendering the rectification of the defect impossible or unreasonably more difficult. In any event, the additional costs of rectification of the defect incurred by these modifications shall be borne by the client.

#### **9.7**

If the delivery of used goods has been agreed with the client, then these goods shall be delivered under the exclusion of any type of warranty whatsoever.

### **10. Approvals of goods, examination, notice, etc.**

#### **10.1**

Complaints about any noticeable lack of conformity shall be registered without undue delay and not later than two (2) weeks after receipt.

#### **10.2**

Upon delivery the Buyer is obliged to carry out a thorough examination of the goods supplied. Defects, which should or could reasonably have been detected during such examination, shall not entitle the Buyer to advance a claim against APOC.

#### **10.3**

The Buyer loses the right to make any claim in respect of defects in the goods supplied if he does not give written notice to APOC specifying the nature of the defect immediately after he has discovered it or should have discovered it.

#### **10.4**

Defects in goods supplied shall not entitle the Buyer to cancel the contract wholly or in part, always provided that APOC sends goods in replacement of the defective goods or repairs the defective part or refunds an amount, equal to the amount paid for the part, within a reasonable period of time.

## **11. Liability**

### **11.1**

The liability of APOC for indemnification, irrespective of the legal basis, in particular for the reason of impossibility, default, delivery of defective goods or wrong delivery, breach of contract, breach of duties in contract negotiations and unauthorized actions, subject to factual fault, shall be limited by the provisions of this article.

### **11.2**

APOC shall not be held liable in the event of

- a) simple negligence of its executive organs, legal representatives, employees or any other vicarious agents;
- b) gross negligence of its nonexecutive employees or other vicarious agents, unless acting in violation of substantial contractual obligations. Substantial contractual obligations shall be the delivery of goods free of defects and in due time, as well as the obligations to give advice, to protect and to provide care, which shall enable the client to use the delivered goods as agreed in the contract or serve to protect the life and limb of the employees of the client or third parties or to protect the property of the clients from substantial damages.

### **11.3**

In the event of APOC being liable for indemnification according to the aforementioned reasons, then the liability for indemnification shall be limited to those damages, which APOC has foreseen as a potential consequence of a breach of contract when concluding the contract or those damages, which, taking into account the circumstances that APOC has been aware of or could have been aware of, APOC should have foreseen, if proper care and attention had been applied. Indirect damages and consequential damages that result from defects of the delivered goods shall only be subject to indemnification, if such damages could have been typically anticipated, if the delivered goods had been used as designated.

### **11.4**

The aforementioned exclusions and limitations to liability shall apply also for the benefit of the executive organs, legal representatives, employees and other vicarious agents of APOC.

### **11.5**

Insofar as APOC provides technical information or gives advice and this information or advice is not owed as part of the scope of services as agreed in the contract, then this information or advice shall be provided free of charge and exclusive of any liability.

### **11.6**

The limitations of this article shall not apply to the liability of APOC for acts of intention, guaranteed product characteristics, harm to the life, body or health or as provided by the product liability law.

## **12. Customer's position**

APOC shall be entitled to delay or cancel agreed deliveries in the event that the Buyer exceeds the time of payment in relation to any contract between the Parties, suspends payment, goes bankrupt, enters into liquidation or, through other acts or omissions, gives justified cause for concern as to his liquidity.



## **13. Grounds for relief**

### **13.1**

The following circumstances shall be considered grounds for relief if they impede the performance of the contract or make the performance unreasonable onerous: industrial disputes and any other circumstance beyond the control of the parties such as fire, war, mobilisation or military call up of a comparable scope, requisition, seizure, currency restrictions, insurrection and civil commotion, shortage of transport, general shortage of materials, defects or delays in deliveries by subsuppliers and service providers.

### **13.2**

The party wishing to claim relief shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance. If grounds for relief prevent the Buyer from fulfilling his obligations, he shall compensate APOC for expenses incurred in storing, securing and protecting the goods.

### **13.3**

Notwithstanding other provisions of these general terms and conditions, either party shall be entitled to terminate the contract by notice in writing to the other party if performance of the contract is delayed more than six (6) months by reason of any grounds for relief as described in Article 13.1

## **14. Other provisions**

### **14.1**

In the event of the contract or these General Terms and Conditions of Purchase not covering certain issues, then those legal provisions shall be considered agreed to cover these issues, which the contracting parties would have agreed to based on the economical objectives of the contract and the purpose of these General Terms and Conditions of Purchase, if they had been aware of these issues not being covered.

### **14.2**

Sole place of jurisdiction for all disputes resulting from or in connection with this contract shall be The Hague, The Netherlands. The laws of the Kingdom of The Netherlands with the exception of the UN Convention on Contract for the International Sale of Goods and the rules of Conflict of Law of Dutch international civil law shall apply.

### **14.3**

Prior to any raising of claims by way of legal action, both parties shall be obliged to participate in an arbitration process before an arbitrator to be named by the Chamber of Commerce of The Hague, The Netherlands. The costs for engaging such an arbitrator shall be borne by both parties in equal shares halfandhalf.