

# General Conditions of Delivery and Payment for



The following constitute the General Conditions of Delivery and Payment of AEROLIFT Kunststoff- und Oberflächentechnik GmbH, Zepelinstraße 1b, 63110 Rodgau, Germany (hereinafter 'AEROLIFT').

## 1. Definitions

'Purchaser' is the company that accepts a quotation from AEROLIFT for a delivery, or the company that submits an offer to conclude a delivery agreement to AEROLIFT, or the company to which AEROLIFT actually delivers products.

'Product' is the object to be delivered on the basis of a contract agreed between the purchaser and AEROLIFT.

'in writing' also describes communication by fax or by email, as well as the provisioning by means of an online portal or IT solution whose use has been agreed by the parties beforehand (written form).

## 2. Scope

2.1. The following terms and conditions of business (T&Cs) are applicable only to legal entities, merchants, companies, legal entities under public law and special funds under public law.

2.2. The following T&Cs apply exclusively; AEROLIFT does not recognise conditions of the purchaser that deviate from or are in opposition to these conditions unless AEROLIFT has expressly agreed to their validity in writing. The following T&Cs apply even if AEROLIFT, in knowledge of the purchaser's conditions that deviate from or are in opposition to these T&Cs, performs the delivery to the purchaser without stating reservations. Individual contractual agreements between the parties have priority over these T&Cs.

2.3. For established business relations, these T&Cs also apply to future contractual business.

2.4. These T&Cs are also to be applied to contracts of sale for products. Contracts for the delivery of goods to be manufactured or produced are equivalent to contracts of sale. This applies even if the purchaser is to provide a substantial proportion of the materials for the manufacture or production of the goods. These T&Cs also apply to contracts in which AEROLIFT's substantial contractual performance constitutes the creation of a work or the rendering of a service.

## 3. Quotations: quotation documents, confirmation of order

3.1. If the purchaser places an order, and this order does not contain amendments, restrictions or other changes when compared to a valid and binding quotation from AEROLIFT, the acceptance of the quotation is effective from receipt of the order by AEROLIFT unless AEROLIFT has withdrawn the quotation before receipt of the order.

3.2. The acceptance of an order also becomes effective if AEROLIFT has sent an order confirmation and this confirmation contains no amendments, restrictions or other changes in comparison to the order.

3.3. However, a response to a quotation that contains amendments, restrictions or other changes constitutes a rejection of the quotation and therefore a counteroffer. In the event of a counteroffer from the purchaser, AEROLIFT is entitled – even within an ongoing business relationship – to suspend delivery until agreement if the deviation demanded by the purchaser is substantial.

If AEROLIFT nonetheless continues to deliver in the event of a counteroffer until the final agreement of the parties to the purchaser's conditions, this in no way constitutes an acceptance of the customer's offer or an acknowledgement of a legal obligation to deliver.

In such a case, the delivery is made subject to the proviso that all claims from the legal relationship may be asserted. The period of limitation for these claims is extended by the duration of the continued delivery.

3.4. AEROLIFT retains copyright and all rights of ownership for all figures, drawings, estimates and other documentation. This also applies to such written documents that are marked 'Confidential'. Documents may not be shared with third parties without AEROLIFT's express written permission.

## 4. Prices, terms of payment

4.1. Unless a different INCOTERM clause has been otherwise agreed, all prices from AEROLIFT are understood as EXW INCOTERMS 2010®, and excluding statutory sales tax applicable at the point in time of invoicing. All ancillary costs – such as costs for freight, insurance, export, transit, import, as well as other authorisations and permits – are borne by the purchaser. Similarly, all taxes, levies, fees and customs duties are also borne by the purchaser.

4.2. Unless expressly agreed otherwise, quotations and invoices are prepared in the currency of the shipping plant.

4.3. Unless otherwise agreed, invoices become due on invoice receipt. Subject to the withdrawal of credit approval, invoices are payable 30 days net after the invoice date. If an early payment discount has been contractually agreed, the granting of a discount is conditional on the settlement of all earlier due invoices.

4.4. For all payment methods used, the day of payment receipt is understood to be the day on which AEROLIFT or third parties granted this right by AEROLIFT are free to dispose of the payment amount.

4.5. The purchaser shall pay the purchase price and accept the goods according to the terms of the contract. If the purchaser fails to comply with a contractual or legal obligation, AEROLIFT may, without prejudice to AEROLIFT's further statutory rights, refrain from making deliveries or providing services.

4.6. If, following contract conclusion, it becomes apparent that AEROLIFT's claims for payment are endangered by the partner's inability to perform, AEROLIFT may decline to provide performance and give the purchaser a reasonable grace period in which the latter must pay for each delivery concurrently or provide a security to the amount of the receivable due. If the purchaser refuses concurrent payment or fails to provide a corresponding security, then AEROLIFT may, on expiry of the reasonable grace period, revoke the contract and demand compensation.

4.7. If a binding order quantity has not been agreed, AEROLIFT will base its estimate on the nonbinding order quantity (target quantity) as specified by the purchaser.

4.8. If the purchaser accepts less than the target quantity, AEROLIFT is entitled to make a reasonable increase to the unit price.

4.9. If AEROLIFT has indisputably delivered defective goods, the purchaser shall nonetheless render payment for the defect-free portion of the delivery except in cases where the parties have agreed that no partial delivery is to take place.

## 5. Retention of title

5.1. AEROLIFT retains title to the objects of delivery until the receipt of all due payments from the business relationship with the purchaser.

5.2. Any assertion of retention of title or seizure of objects of delivery by AEROLIFT does not constitute revocation of the contract unless this has been explicitly stated by AEROLIFT in writing.

5.3. The purchaser is entitled to sell on the objects of delivery during the normal course of business. However, the purchaser hereby assigns AEROLIFT all receivables to the amount of the purchase price agreed between AEROLIFT and the purchaser (including sales tax) such as become due to the purchaser from this onward sale, and independently of whether the objects of delivery are sold on without or after further processing. The purchaser is authorised to collect these receivables following their assignment. This in no way affects AEROLIFT's own entitlement to collect the receivables itself; however, AEROLIFT undertakes not to collect the receivables while the purchaser properly observes payment commitments and does not enter into default. If the purchaser defaults, however, AEROLIFT may require the purchaser to provide details of the assigned receivables and their obligors, to provide all of the information required for collection, to surrender the associated documents and to inform the (third party) obligors of the assignment.

5.4. Processing or modification of the goods by the purchaser is done on behalf of AEROLIFT at all times. If the objects of delivery are processed together with other objects not belonging to AEROLIFT, AEROLIFT acquires joint ownership of the new thing in the proportion of the value of the objects of delivery to the other objects processed at the time of processing.

5.5. If the objects of delivery are inextricably commingled with other objects not belonging to AEROLIFT, AEROLIFT acquires joint ownership of the new thing in the proportion of the value of the objects of delivery to the other commingled objects. The purchaser safeguards this joint ownership for AEROLIFT.

5.6. The purchaser may not pledge the objects of delivery nor assign them as collateral. In the event of seizure, confiscation or other similar legal situations involving third parties, the purchaser shall notify AEROLIFT without delay and provide AEROLIFT with all information and documentation required for the latter to assert its rights. Enforcement officers or third parties are to be notified of AEROLIFT's property. The purchaser shall use physically separate storage for AEROLIFT property and mark it indelibly as AEROLIFT property before putting it away.

5.7. AEROLIFT undertakes to release the securities to which it is entitled at the purchaser's request in the event of the realisable value of the securities exceeding the receivables to be secured by more than 20%. AEROLIFT chooses the securities to be released as it sees fit.

## 6. Scope of delivery, delivery lead time, delivery quantities

6.1. Compliance with agreed delivery and performance deadlines is conditional on all technical issues being clarified, and payments or other obligations on the part of the purchaser being received or fulfilled in good time. If this does not occur, the deadline is extended as appropriate. Lead times are extended by design modifications and product changes as desired by the purchaser or as initiated by AEROLIFT. Lead time extensions persist until the changes have been released by the purchaser in the agreed format.

6.2. Unless otherwise agreed, the notification of shipping or pickup readiness is authoritative for assessing compliance with the delivery date.

6.3. AEROLIFT supplies the purchaser with the contractual goods according to the former's delivery capabilities.

6.4. Partial deliveries are permitted inasmuch as this does not prejudice usage. Overshipments or short shipments for production reasons are always permitted within a tolerance of 10% of the total order quantity. The agreed total price changes to reflect this proportional difference. The purchaser is not entitled to refuse to make due payments or accept goods on account of an overshipment or short shipment as defined by 6.4.

6.5. The delivery lead time is extended in the event of vis major, strike, temporary impossibility or adverse weather conditions for the duration of this impediment.

## 7. Shipping, transfer of risk

7.1. Insofar as the order confirmation does not state otherwise, delivery is agreed as 'ex works' (EXW INCOTERMS 2010®).

7.2. AEROLIFT's notification of shipping or pickup readiness is authoritative for assessing compliance with the delivery date or lead time.

7.3. Unless otherwise agreed, the purchaser shall pick up goods notified as being ready for shipping without delay. If the purchaser fails to honour this obligation, AEROLIFT may either ship the goods to the purchaser at the latter's expense or store the goods at the purchaser's cost and risk on premises operated by AEROLIFT or a third party.

7.4. If goods are not shipped EXW INCOTERMS 2010®, then the risk passes to the first haulier simultaneously with the handover of the goods.

## 8. Property rights

8.1. The purchaser shall inform AEROLIFT about third-party claims to property rights concerning the delivered products without delay, and shall allow AEROLIFT

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to mount a legal defence. In the event of third-party claims to property rights, AEROLIFT is entitled to make any necessary changes at its own cost to goods – even if already delivered and paid for.

8.2. If AEROLIFT is prohibited from manufacture or delivery by a third party appealing to a property right owned by this party, AEROLIFT is entitled to cease work until clarification of the legal situation by the purchaser and the third party, except in cases where AEROLIFT has culpably infringed the property right. If the delay means that it would not be reasonable for AEROLIFT to continue with the order, AEROLIFT is entitled to revocation.

8.3. The purchaser shall ensure that objects supplied to AEROLIFT are not encumbered by third-party property rights. The purchaser indemnifies AEROLIFT against all corresponding third-party claims.

## 9. Liability for late delivery

9.1. If AEROLIFT fails to fulfil its obligation to deliver the goods on the terms of the contract and the underlying contract of sale has a long stop date in the sense of section 286, para. 2, no. 4 of the German Civil Code (BGB) or section 376 of the German Commercial Code (HGB), and the purchaser has no interest in further fulfilment of the contract, AEROLIFT is liable according to legal provisions, except if not culpably in breach of the contract.

9.2. If AEROLIFT fails to fulfil its obligation to deliver the goods on the terms of the contract, AEROLIFT is liable according to legal provisions insofar as the purchaser asserts claims for compensation based on wilful intent or gross negligence on the part of AEROLIFT's representatives or vicarious agents. Insofar AEROLIFT is not accused of wilful breach of contract in the context of this liability, AEROLIFT's liability for compensation is limited to the foreseeable losses that would typically occur.

9.3. If AEROLIFT fails to fulfil its obligation to deliver the goods on the terms of the contract, it is liable according to legal provisions insofar as it has culpably breached a fundamental contractual obligation. Insofar AEROLIFT is not accused of wilful breach of contract in this specific case, AEROLIFT's liability for compensation is limited to the foreseeable losses that would typically occur.

9.4. This does not affect liability due to culpable loss of life, physical injury or impairment to health.

9.5. Insofar as the above provisions do not state otherwise, any further liability for late delivery is excluded.

## 10. Liability for defects

10.1. Insofar as a product has a specification, the product is free from defects if it conforms to manufacturing-related tolerances. The purchaser has recourse to an intended use or purpose only if this use or purpose on the part of the purchaser has been explicitly agreed in writing.

10.2. All information and illustrations provided in brochures and catalogues are industry-typical approximations except where these have been designated explicitly as binding by AEROLIFT.

10.3. Unless otherwise agreed by the parties, the goods are contractually compliant if they comply with the provisions of the shipping country. Normative requirements in countries other than the shipping country must be agreed explicitly in writing.

10.4. The purchaser shall notify AEROLIFT of obvious defects and submit a formal complaint without delay. Insofar as AEROLIFT is answerable for the defect, AEROLIFT may perform remediation or substitute delivery as it sees fit. If remediation is chosen, AEROLIFT shall bear all expenditure as is required to remedy the defect, including transportation costs, travel expenses, and costs for labour or materials, inasmuch as these costs have not been increased by the purchased object having been transported to a place other than the place of performance. This under no circumstances includes costs caused by actions that the purchaser has performed without first obtaining AEROLIFT's consent. If AEROLIFT chooses remediation, the purchaser shall provide the object at the place of manufacture for remediation if requested to do so by AEROLIFT.

10.5. If AEROLIFT fails to provide a cure even on a second attempt, the purchaser may revoke the contract or reduce the purchase price. In the event of remediation, a cure is not considered to have failed prior to the second unsuccessful attempt.

10.6. AEROLIFT is liable for defects according to legal provisions insofar as AEROLIFT has fraudulently concealed the defect or has offered a warranty for the quality of the object.

10.7. AEROLIFT is liable for defects according to legal provisions insofar as the purchaser asserts claims for compensation based on wilful intent or gross negligence on the part of AEROLIFT's representatives or vicarious agents. Insofar as AEROLIFT is not accused of wilful breach of contract in the context of this defect liability, AEROLIFT's liability for compensation is limited to the foreseeable losses that would typically occur.

10.8. AEROLIFT is liable for defects according to legal provisions insofar as it has culpably breached a principal obligation to perform. Insofar as AEROLIFT is not accused of wilful breach of contract in this specific case, AEROLIFT's liability for compensation is limited to the foreseeable losses that would typically occur.

10.9. This does not affect liability for defects due to culpable loss of life, physical injury or impairment to health, or liability according to the German Product Liability Act (ProdHaftG).

10.10. Insofar as the above provisions do not state otherwise, a liability for defects is excluded.

10.11. Claims based on BGB s. 437 lapse twelve months after the transfer of risk.

10.12. The period of limitation for recovering from the supplier as provided for by BGB ss. 478 and 479 remains unaffected; it is defined as five years from the delivery of the defective object.

## 11. Total liability

11.1. As regards other claims for compensation, and without regard for the legal basis of the claim as asserted, and especially for such claims as are based on *culpa in contrahendo*, based on some other neglect of duty or on tortious claims,

AEROLIFT is liable to compensate for material damages as provided for by BGB s. 823, no. 10, para. 5, 6, 7 and 8. Other liability not addressed by the above is excluded.

11.2. Insofar as AEROLIFT's liability for compensation is excluded or restricted by this section, this also applies to the personal liability for compensation as applicable to AEROLIFT's salaried and non-salaried employees, members of staff, representatives and vicarious agents.

11.3. For all claims not subject to a period of limitation due to a defect in the object, the period of limitation is set at 18 months. This period starts with the knowledge of or point in time at which the purchaser must have known of the damage and identity of the liable party without being grossly negligent.

## 12. Tools and operating materials

12.1. Insofar as not otherwise agreed, the costs of production for tools and other operating materials (moulds, templates, etc.) are invoiced separately from the goods to be delivered.

12.2. If the purchaser suspends or terminates the business relationship while the tools or operating materials are being manufactured, the purchaser shall bear all costs of production incurred to date.

12.3. Unless otherwise expressly agreed in writing, the tools or operating materials manufactured or procured by AEROLIFT remain the property of AEROLIFT.

12.4. As a general rule, tool costs or portions of costs are invoiced separately from the goods value. Unless otherwise agreed, these costs must be paid either on receipt of the initial sample or, if no sample has been requested, on receipt of the first consignment of goods.

12.5. AEROLIFT shall store the tools or operating materials for the purchaser for three years after the last high-volume production run. If the purchaser notifies AEROLIFT that orders will be placed within a period of up to one additional year, AEROLIFT shall keep the abovementioned tools and materials in storage for this period of time. AEROLIFT may otherwise dispose of the tools or operating materials as it sees fit.

## 13. Counterclaims, assignability

13.1. The purchaser may assert offset rights only if the purchaser's counterclaims are recognised as legally binding, uncontested or acknowledged by AEROLIFT. Furthermore, the purchaser is entitled to assert retention of title only insofar as the purchaser's counterclaim is based on the actual contractual relationship.

13.2. The purchaser may assign rights from contracts the purchaser has concluded with AEROLIFT only with AEROLIFT's written consent.

## 14. AEROLIFT's right of revocation, termination of contracts of indefinite duration

14.1. Should an unforeseen event occur for which AEROLIFT bears no responsibility, and which substantially changes the commercial significance or content of the performance, or which has a substantial impact on AEROLIFT's business, and in the event of an impossibility that comes to light subsequently and for which AEROLIFT bears no responsibility, AEROLIFT has the right to revoke the contract in whole or in part, unless a partial revocation is considered unreasonable for the purchaser. Other legal rights of revocation are not affected by this provision.

14.2. The purchaser has no right to claim compensation due to a revocation of this kind. If AEROLIFT wishes to avail itself of the right of revocation, AEROLIFT must notify the purchaser of this intention and even if an extension to the delivery time was initially agreed with the purchaser.

14.3. AEROLIFT may terminate contracts of indefinite duration by giving three months' notice. If this right of termination is exercised, this does not affect contracts of delivery for other products.

## 15. Place of performance, severability clause, written form

15.1. Unless expressly agreed otherwise, the place of performance is AEROLIFT's place of business.

15.2. If a provision or part of a provision within these T&Cs is or proves to be invalid, this does not affect the validity of the remaining provisions or part of the provision. In this case, the invalid provision will be substituted for by the statutory provisions.

15.3. Any agreement deviating from these Standard Terms and Conditions of Sale, and any deletion of or amendment to its provisions, is not valid unless provided in writing. This also applies to changes to this written form requirement clause.

## 16. International business partners

If the purchaser operates from premises outside Germany, the following amends and overrules (where applicable) the above:

16.1. The law of the Federal Republic of Germany applies exclusively.

16.2. In the event of contradictory contractual offers and declarations of acceptance, the delivery is considered a new offer according to the conditions of the last declaration made by AEROLIFT.

16.3. If AEROLIFT has a specific obligation, AEROLIFT must provide a replacement delivery for a defective delivery only if AEROLIFT is in agreement.

16.4. The purchaser loses the right to base a claim on the contractual non-compliance of goods if the purchaser does not report this to AEROLIFT within 12 months of the actual handover of the goods to the purchaser.

16.5. If one of the provisions of section 16 contradicts the other General Conditions of Delivery and Payment, the provision in section 16 takes precedence.

16.6. The contract language is German. If the parties to the contract utilise a different language, then the German wording takes precedence.

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