

# General Terms & Conditions for the Supply of Individual Parts and Spare Parts

## 1. RECOGNITION OF SUPPLY TERMS

The supply of delivery items including moveable objects to be manufactured or created according to § 651 German Civil Code (BGB) (contract for labour and materials) by KraussMaffei Technologies GmbH ("Supplier") shall be carried out only on the basis of the following General Supply Terms. The content of all agreements between the Ordering Party and Supplier outside of these General Supply Terms shall require the written confirmation by the Supplier. If individual terms of these General Supply Terms are suspended through the explicit written agreement between the Ordering Party and Supplier, the validity of the remaining terms shall remain unaffected thereby. Other terms, in particular the general business terms and conditions of the Ordering Party, shall not apply whether or not they were explicitly rejected by the Supplier. These General Supply Terms shall also apply exclusively if the Supplier provides performance unconditionally with the knowledge of other business terms and conditions.

## 2. OFFER

- 2.1 The Supplier's offers shall be valid for 90 (ninety) days from the date of the offer, the right of prior sale shall however remain reserved. Consulting services performed by the Supplier in advance of assignment of the order shall be paid according to the standard rates. The Supplier reserves the right of ownership and copyrights to its cost estimates, drawings, figures, samples, weight and size measurements, as well as other documents, including those in electronic form. These documents may only be made available to third parties with the consent of the Supplier.
- 2.2 Technical descriptions, as well as all weight and size measurements of the offer, are only approximations and to this extent only binding on the Supplier when it expressly declares them to be.

## 3. SCOPE OF DELIVERY

- 3.1 The written order confirmation of the Supplier shall exclusively control the scope of the delivery. This shall also apply for any safety devices.
- 3.2 The Supplier is entitled to make part deliveries to the extent their acceptance is not unreasonable for the Ordering Party, especially if the delivery of the outstanding goods is secured and no significant additional expenses or significant additional costs arise thereby for the Ordering Party (unless the Supplier states it is prepared to assume these costs). Every part delivery can be invoiced separately.
- 3.3 To the extent acceptance is agreed, the relevant legal requirements of the law on contracts for work and labour shall apply, to the extent no differing terms have been reached in these General Supply Terms.

## 4. PRICES

- 4.1 Unless otherwise agreed, the prices shall be valid "ex works" Munich (EXW Incoterms 2010) or from another address provided by the Supplier. Any VAT tax due shall be calculated at the legally valid rate and shall be paid by the Ordering Party.
- 4.2 For domestic and foreign business transactions packaging is invoiced separately and ownership passes to the Ordering Party.
- 4.3 The Supplier may invoice the Ordering Party for those additional expenses arising from changes requested by the Ordering Party if the Supplier has agreed to the requested changes and on condition that the Supplier has provided notice to the Ordering Party of the accrual of additional expenses.

## 5. PAYMENTS

- 5.1 Unless otherwise agreed, payments must be made immediately after delivery of the goods and receipt of the invoice without discount to the Supplier's account; the invoice is deemed to have been received at the latest on the third day following posting.
- 5.2 The day of payment shall mean that day on which the Supplier has actual access to the payment amount.
- 5.3 In the case of delay of payment the Supplier shall have the right to demand delay interest in the amount of eight percentage points above the basis rate. The assertion of further damages shall remain reserved.

## 6. SET-OFF AND RIGHT OF RETENTION

The right to retain payments or to set-off with counterclaims shall be available to the Ordering Party only to the extent that its counterclaims are uncontested or have been legally established. The exercise of a right of retention by the Ordering Party shall be precluded to the extent the counterclaims do not relate to the same contractual relationship.

## 7. RESERVATION OF RIGHTS

- 7.1 The Supplier shall retain ownership of the delivery item until the receipt of all payments arising from the business relationship. If a current account relationship exists in the scope of the business relationship, the Supplier shall retain ownership of the delivery item until the receipt of all payments from recognised balances.
- 7.2 If the Ordering Party acts contrary to the contract, in particular in the case of a delay in payment, the Supplier is entitled to refuse his services from all contracts concluded between him and the Ordering Party until performance of delayed service by the Ordering Party, or take back the delivery item supplied under retention of title ("Reserve title goods"). An advance determination of a deadline shall not be required in the case of delay in payment. The Supplier may enter the business premises of the Ordering Party during normal business hours for the purpose of reclaiming reserve title goods. Further claims of the Supplier shall remain unaffected.
- 7.3 On taking back the reserve title goods the Supplier is authorised to dispose of the goods appropriately following advance warning; the proceeds from the disposal must be credited to the accounts payable of the Ordering Party, less reasonable disposal costs.
- 7.4 To the extent the Ordering Party uses the reserve title goods for financing purposes or sells them in the normal course of business it shall be required to maintain the Supplier's reservation of title toward the purchasing party. The Ordering Party now assigns all receivables and ancillary rights from the further sale until satisfaction of the Supplier's claims in the amount of the total invoice value (including VAT) against its purchasers or third parties regardless of whether the items have been resold with or without any prior further processing.
- 7.5 The Ordering Party shall be required to provide notice of the assigned claims to the Supplier's payment to the purchaser upon resale. The Ordering Party shall not have the right to sell the reserve title goods to a purchaser which has precluded or limited the assignment of the payment demands. If the reserve title goods have been combined with other goods not belonging to the Ordering Party, the assignment shall only occur in relation to the co-ownership shares of the processed component according to section 7.10.
- 7.6 The Ordering Party shall remain authorised to collect the receivables after assignment. The Supplier's entitlement to collect the receivables itself shall remain unaffected. The Supplier shall not however collect the receivables so long as the Ordering Party fulfils its payment obligations from the collected revenue, does not default on payments or suspend payments and in particular no petition for the opening of insolvency proceedings is filed. If one of these conditions is present the Supplier may demand that the Ordering Party make the assigned receivables and their debtors known, provide all necessary information for collection, turn over the associated documentation and inform the debtors of the assignment. Upon the occurrence of such a condition the Ordering Party's right to collect the receivables shall be extinguished.
- 7.7 To the extent a current account relationship exists according to § 355 German Commercial Code (HGB) between the Ordering Party and its purchaser, the prior assigned receivable from the Ordering Party to the Supplier shall also relate to the recognised account balance as well as the available account surplus of the closing balance in the case of the purchaser's insolvency.
- 7.8 Furthermore the Ordering Party may not sell, pledge or transfer the reserve title goods as a security without the prior written consent of the Supplier. In case of seizure or confiscation or other dispositions of the reserve title goods by a third party the Ordering Party shall indicate the proprietary rights of the Supplier to the third parties and inform the Supplier immediately thereof. To the extent the third party is not able to reimburse the Supplier for court and out of court costs of a legal proceeding according to § 771 German Code of Civil Procedure (ZPO), the Ordering Party shall be liable for the Supplier's resulting loss.
- 7.9 The Ordering Party shall be obligated to handle the reserve title goods with care and in particular adequately insure them for replacement value against fire, water and theft.

7.10 Processing or transformation of the reserve title goods by the Ordering Party shall in each case be performed for the Supplier. If the reserve title goods are converted or mixed with materials that are not owned by the Supplier, the Supplier shall acquire co-ownership of the new item in the relation to the value of the reserve title goods to the other processed materials at the time of processing or transformation, the conditions that apply to a delivered reserve title good shall also apply to the resulting new item.

7.11 If the reserve title goods are inseparably mixed or joined with other items not owned by the Supplier, the Supplier shall acquire co-ownership of the new item in relation to the value of the reserve title goods to the other processed or mixed items at the time of the mixing or joining. If the goods are mixed or joined in such a way that the Ordering Party's item is to be regarded as the main item, proportional co-ownership shall be transferred to the Ordering Party. The Ordering Party shall safeguard the resulting sole ownership or co-ownership for the Supplier.

7.12 The Ordering Party, in order to secure the Supplier's claims against it, shall also assign the Supplier claims against third parties that may arise due to the fact that the reserve title goods are fixed to real property.

7.13 Upon the Supplier's demand, the Ordering Party shall fully support the Supplier in protecting the Supplier's rights according to this section<sup>7</sup> in the country in which the reserve title goods are located.

#### **8. TRANSFER OF RISK**

Unless otherwise agreed, the risk shall pass to the Ordering Party when the goods have left the Supplier's facility, even in the case of part deliveries or if by way of exception the Supplier has assumed other performance, i.e. assumption of shipping costs, delivery and assembly. The risk shall also pass to the Ordering Party in the case of the Ordering Party's delay of acceptance.

#### **9. NOTICE OF DEFECTS**

9.1 The Ordering Party's defect rights according to section 13 require that the Ordering Party inspect the delivery item upon delivery and properly provide notice of defects according to §377 of the German Commercial Code (HGB). Objections shall be in written form with specific information of the defect. Objections due to incomplete delivery and other recognisable defects shall be immediately communicated to the Supplier in writing at the latest within five working days after receipt of the delivery, concealed defects without delay at the latest within five working days of their discovery. The acceptance of the delivery item may not be refused due to immaterial defects. Claims from delayed reporting of the defect shall be precluded.

9.2 To the extent acceptance has been agreed, § 640 of the German Civil Code (BGB) shall apply in variance to section 9.1. Five working days shall be deemed an appropriate deadline in the meaning of § 640 paragraph 1 sentence 3 German Civil Code (BGB), insofar as the Supplier has not determined a different deadline.

9.3 If the Supplier in variance to section 4.1 has engaged a third party ("Transporter") with the delivery of the delivery item on the request of the Ordering Party, the Ordering Party shall in the presence of the Transporter record and confirm any noticeable transport damage. If transport damage was not recognisable from the outside upon delivery, the Ordering Party shall immediately report to the Transporter in writing upon its discovery, not later than seven days after its delivery. The Ordering Party shall inform the Supplier immediately in writing of the transport damage and the report. Claims from improperly recorded or untimely notice of transport damage shall be precluded.

9.4 The costs of the inspection of the delivery item shall be borne by the Ordering Party.

#### **10. DELIVERY DEADLINE**

10.1 The delivery deadlines noted in the offer are nonbinding unless a delivery deadline in the individual case was agreed to be binding. The adherence by the Supplier to an agreed binding delivery deadline shall require that all commercial and technical questions between the parties to the contract have been finally resolved at the time of the agreement of the delivery date and the Ordering Party has timely fulfilled all of its obligations. If this is not the case or changes to the delivery item are later made, the delivery period shall be appropriately extended. This shall not

apply if the Supplier is solely responsible for the delay. In cases of non-binding delivery deadlines the Supplier shall not be found to be in delay until after the expiration of an appropriate deadline determined by the Ordering Party. The Ordering Party may not establish such a deadline earlier than four weeks after the nonbinding delivery deadline.

10.2 The Supplier shall not be deemed to be in delay if its deliverers, for reasons not in the Supplier's control, perform an incorrect or untimely delivery.

10.3 The delivery deadline shall be deemed fulfilled when the delivery item has left the Supplier's facility before its expiration or when the item has been reported as being ready to be dispatched in the case of an agreed obligation to pick up the item or the Ordering Party's delay in acceptance.

10.4 If shipment is delayed upon the request of the Ordering Party or it is found to be in acceptance delay, the Ordering Party shall be charged for the resulting storage costs of at least 1% of the invoice amount for each started month when stored at the Supplier's facility, unless the Ordering Party can evidence a lesser damage. The Supplier shall however be entitled to dispose of the delivery item after the expiration of a fixed appropriate grace period.

10.5 If the Supplier is deemed to be in delay and damages result to the Ordering Party, the Ordering Party shall be entitled to demand lump sum compensation for all of the Ordering Party's claims based on the delayed delivery. This shall amount to 0.5% for each full week of delay, in total however a maximum of 5% of the value of the delayed part of the total delivery. The delay compensation shall not be due if the delay does not last longer than ten working days. The right to evidence a lesser extent of loss or damage shall remain reserved.

10.6 In the event that the Ordering Party grants the Supplier found to be in delay a reasonable deadline for performance, under consideration of any legal exceptions thereto, and if such extension is materially breached, the Ordering Party shall be entitled to withdraw from the contract in accordance with statutory provisions. The Ordering Party shall be required to inform the Supplier in writing within 30 (thirty) days from the end of the extension that it will exercise this right.

#### **11. FORCE MAJEURE**

11.1 If the Supplier is hindered in the fulfillment of its contractual obligations on the basis of force majeure such as mobilization, war, terrorism, insurrection, natural catastrophes, fire or other unforeseeable circumstances not caused by the Supplier such as strikes or lawful lockouts, operational disruptions, transportation shortages, difficulties procuring raw materials or lack of supply caused by its deliverers, the agreed delivery deadlines shall be extended by the duration of the hindrance including an appropriate start-up period, at the maximum however by three months. The conditions cited are also not the attributable to the Supplier if they occur in the course of an existing delay. The Supplier shall inform the Ordering Party as soon as possible of the start and foreseeable end of such conditions.

11.2 If the hindrance lasts three months or longer, both parties may withdraw from the contract.

#### **12. ASSEMBLY**

The assembly is not included in the price and is only carried out by the Supplier if this is agreed separately and only at the assembly conditions of the Supplier, as well as in return for separate payment.

#### **13. RIGHTS ARISING FROM DEFECTS**

13.1 Subject to sections 9.1 and 9.2 the following shall apply in cases of defects of the delivery item to the exclusion of further claims by the Ordering Party with the exception of damage claims according to section 14:

13.2 The limitation period for defect rights shall be twelve months from delivery or acceptance to the extent it has been agreed.

13.3 This limitation does not however apply if (i) a defect was undisclosed in bad faith or (ii) a guarantee for the condition or quality of a good was granted (in this instance the limitation period provided under the guarantee shall apply). In the case of damage claims this limitation does not apply in the following cases: (i) in the event of injury to life, limb and

health, (ii) willful intent and (iii) gross negligence by the agents or managerial executives of the Supplier. This limitation shall also not apply to defects in a structure or to delivery items which have been used according to their normal use for a structure and which have caused its defectiveness.

- 13.4 The Supplier shall have the choice of remedy for the defective delivery item either through the correction of the defect (improvement) or delivery of a defect-free item (subsequent delivery). The improvement shall occur without recognition of a legal obligation. In the case of an improvement the remaining portion of the original limitation period shall begin to run with the return of the improved delivery item. The same shall apply in the case of a subsequent delivery.
- 13.5 If the remedial measure fails, the Ordering Party may withdraw from the contract. The right to reduce the purchase price shall be precluded. Damage claims shall be according to section 14.
- 13.6 Upon consultation with the Supplier, the Ordering Party shall grant the Supplier the necessary time and opportunity to perform the remedial measures and provide unimpeded access to the delivery item; otherwise, the Supplier is exempt from liability for the resulting consequences.
- 13.7 Costs relating to the remedial measure such as shipment, travel, transport and material costs shall not be reimbursed to the Ordering Party to the extent they increased due to the delivery item being brought to another location other than the agreed place of delivery. The resulting increased costs shall be invoiced to the Ordering Party by the Supplier. Likewise the disassembly and installation costs shall not be reimbursed. The Ordering Party may only assert a claim for these costs in the scope of a damage claim according to section 14.
- 13.8 For the purpose of the remedial measure, the Ordering Party shall at no cost provide the Supplier with available tools and lifting equipment, as well as fitters and laborers.
- 13.9 The Ordering Party shall bear the appropriate costs of an improper assertion of defect rights (i.e. if the product was not defective); the same shall apply if the Supplier erroneously grants defect rights, without being required to do so.
- 13.10 No defect rights exist in the following cases; unsuitable or incorrect use, incorrect assembly or commissioning by the Ordering Party or third parties, natural wear and tear, incorrect or negligent treatment, incorrect maintenance, unsuitable operating resources, defective construction work, unsuitable building site, chemical, electrochemical or electrical influences, provided the Supplier is not responsible for them. There shall be no defect rights for wear parts.
- 13.11 If the Ordering Party or a third party improperly repairs the delivery item, the Supplier shall not be liable for the resulting consequences. The same shall apply for modifications to the delivery item undertaken without the prior consent of the Supplier.
- 13.12 Guarantees, in particular condition or quality guarantees, are only binding on the Supplier to the extent they (i) are contained in an offer or an order confirmation, (ii) are explicitly designated as "guarantee" or "condition or quality guarantee", and (iii) the Supplier's resulting obligations from the guarantee are explicitly stipulated.
- 13.13 Should the use of the delivery item lead to an infringement of protected commercial rights or copyrights in Germany, the Supplier shall ensure, at its choice and its own expense, for the agreed upon or intended use that the Ordering Party obtains the adequate right of further use or shall modify or exchange the delivery item in a manner acceptable to the Ordering Party such that protected rights are no longer infringed.
- 13.14 If this is not possible or is not reasonable for the Supplier, the Ordering Party shall have the right to withdraw from the contract. Under the conditions cited the Supplier shall also have a right to withdraw from the contract.
- 13.15 For delivery of goods as per drawings, models or other specifications of the Ordering Party, the Supplier is not liable for any breach of industrial property rights or copyright. In this case the Ordering Party must exempt the Supplier from any claims from third parties.
- 13.16 The Supplier's obligations according to section 13.11, subject to the damage claims according to section 14, are final for the instance of infringement of property rights or copyrights. They exist only if,

(a) The Ordering Party immediately informs the Supplier in writing of asserted infringement of property right or copyright claims,

- (b) The Ordering Party supports the Supplier to an appropriate extent in the defense of the asserted claims and/or enables the Supplier to effect modification measures as described above,
- (c) the Ordering Party does not admit or recognise to a third party the existence of a legal injury,
- (d) all defensive measures included out of court settlements remain reserved for the Supplier at its discretion,
- (e) the injury of the property right or copyright is based on a statement from the Ordering Party and
- (f) the injury to the property right or copyright was caused by the Ordering Party or a third party engaged by the Ordering Party carrying out their own changes to the delivery item or using it together with products not made available by the Supplier or using it together with products not recommended by the Supplier or the delivery item is used in a manner not foreseen by the Supplier.

#### 14. LIABILITY

- 14.1 The Supplier shall be liable for damages from simple negligence only resulting from breaches of material contractual obligations the fulfillment of which make the proper execution of the contract possible and the observance of which the contractual partners regularly rely upon; in this case liability is however limited to typical foreseeable damages. This limitation of liability applies in the same manner for damages caused by the gross negligence of employees or representatives who are not agents or members of the management of the Supplier.
- 14.2 In cases under section 14.1 the liability is limited to the order value of the delivery concerned. Furthermore, there is no liability for consequential damages, indirect damages or loss of earnings.
- 14.3 In cases under section 14.1, the limitation period shall be two years after the point in time the claim originated and the Ordering Party obtained knowledge of the circumstances giving rise to the claim. Regardless of the Ordering Party's knowledge, the claim shall expire three years after the event which caused the damage. The limitation period for damage claims based on defects is found in section 13.1.
- 14.4 The limits to liability above shall apply for all damage claims regardless of legal basis with the exception of the Ordering Party's damage claims (i) because of willful intent, (ii) according to product liability law, (iii) because of bad faith failure to disclose a defect, (iv) due to defects covered by a guarantee of condition or quality (in this regard the liability terms and limitation period provided in the guarantee shall apply), (v) from injury to life, limb or health or (vi) due to gross negligence of agents or members of the management of the Supplier.
- 14.5 The above liability limitations also apply for the Ordering Party's damage claims against the Supplier's agents, management, employees or representatives.

#### 15. SOFTWARE USE

- 15.1 To the extent software is included in the delivery the Ordering Party shall be granted a non-exclusive and non-licensable right to use the software that is delivered, including the documentation.
- 15.2 The delivered software shall be provided for use by the Ordering Party only on the delivery item it is intended for. Use of the software on more than one system shall not be permitted.
- 15.3 The Ordering Party may only reproduce, revise or translate the software or convert the object code into source code to the extent permitted by law (sections 69a pp of the German Copyright Law (UrhG). The Ordering Party undertakes not to remove or modify the manufacturer's details – particularly trademark, copyright or other notices – unless the Supplier has first given its explicit written consent.
- 15.4 All other rights to the software and the documentation, including copies, shall remain with the Supplier or with the software supplier. It shall not be permitted to loan, rent, grant or sublicense the software to third parties.

**16. DETERIORATION OF FINANCIAL POSITION**

- 16.1 If it is demonstrated after the conclusion of the contract with the Ordering Party that the performance of its contractual obligations is in danger due to its financial condition (in particular in the case of payment stoppages, application for an insolvency proceeding, seizure or foreclosure, levy of bill or check protests and refusal of direct debit also with respect toward or with third parties), the Supplier may withhold the delivery until prepayment of the purchase price or the establishment of an appropriate security. This shall also apply in the case of a founded doubt as to the Ordering Party's ability to pay or its credit worthiness as a result of a delay in payment.
- 16.2 The Supplier may completely or partially withdraw from the contract if an insolvency proceeding is applied for or opened upon the assets of the Ordering Party.

**17. ORDERING PARTY'S RIGHT OF CANCELLATION**

To the extent the delivery item is not a fungible, manufactured or a movable object to be produced according to § 651 of the German Civil Code (BGB), the Ordering Party can cancel the contract at any time up to completion of the work only then when an important reason exists according to § 649 of the German Civil Code (BGB). The Supplier shall in this case be entitled to the agreed remuneration. However, the Supplier must allow the deduction of expenditures which it saves as a result of cancellation of the contract or of income which it acquires, or maliciously omits to acquire, by using its labour and equipment elsewhere.

**18. COMPLIANCE WITH APPLICABLE LAW AND EXPORT**

- 18.1 The Ordering Party shall comply with all legal regulations and official requirements as well as all other applicable laws and in particular export provisions and the laws of the country in which the Ordering Party will do business. The Ordering Party shall duly obtain all required authorisations and licenses as well as all other required approvals which are required according to applicable laws for the use and or export of the delivery item.
- 18.2 The Supplier shall have the right to withhold its performance from the Ordering Party, if the Ordering Party would breach such applicable laws or if all of the required authorisations have not been obtained and it is not due to the fault or responsibility of the Supplier.
- 18.3 Fulfilment of the contract on the part of Krauss Maffei Technologies GmbH is under the proviso that there are no obstacles to the fulfilment due to national or international regulations or foreign trade legislation as well as no embargos (and/or other sanctions).

**19. ASSIGNMENT**

The Ordering Party may not completely or partially assign the rights and obligations arising in connection with deliveries without the prior written consent of the Supplier. The Supplier may assign the rights and obligations arising upon it in connection with deliveries, in particular to affiliated companies in the meaning of § 15 of the German Stock Law (AktG).

**20. SEVERABILITY CLAUSE**

Should individual conditions of these General Supply Terms be or become unenforceable, it shall not affect the enforceability of the remaining conditions.

**21. APPLICABLE LAW, ARBITRATION, PLACE OF PERFORMANCE**

- 21.1 The laws of the Federal Republic of Germany exclusively apply to all legal relationships between the Supplier and the Ordering Party to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 21.2 All disputes arising out of or in connection with the contractual relationship between the Supplier and the Ordering Party including the underlying terms and conditions or their validity shall be finally settled in accordance with the Arbitration Rules of Arbitration of the International Chamber of Commerce (ICC) - being valid at the time of the arbitration - by three arbitrators appointed in accordance with said Rules without recourse to the ordinary courts of law. The place of arbitration is Munich, Germany. The language of the arbitral proceedings is English. Docu-

mentary evidence shall be presented in English. Regarding the procedure of taking evidence, the Arbitral Tribunal shall apply the IBA-Rules on Taking of Evidence in International Commercial Arbitration.

- 21.3 The place of performance for all obligations arising from or in connection with a delivery is the facility of the Supplier.