

## 1 VALIDITY

- 1.1 The terms and conditions contained in this General Terms and Conditions shall apply to all deliveries, services and offers of JONKER SAILPLANES GmbH (hereinafter "**Seller**") and such deliveries, services and offers are made exclusively on the basis of these General Terms and Conditions. These General Terms and Conditions are part of all contracts that the Seller concludes with his contractual partners (hereinafter also referred to as "**Client**") for the deliveries or services offered by the Seller. They also apply to all future deliveries, services or offers to the Client, even if they are not agreed separately.
- 1.2 Any terms and conditions issued by the Client's shall not apply, even if the Seller does not object to their validity separately in individual cases. Even if the Seller refers to a letter that contains or refers to terms and conditions of the Client, this does not imply agreement with the validity of those terms and conditions.

## 2 OFFER AND CONCLUSION OF CONTRACT

- 2.1 The ordering of a glider or other delivery item, in particular spare parts, by the Client shall be deemed to be a binding contractual offer. Unless otherwise stated in the order, the Seller is entitled to accept this contract offer within two weeks of its receipt. A contract is concluded, in the absence of a special agreement, with the written order confirmation of the Seller or by delivery of the goods to the Client.
- 2.2 The concluded contract is, including these General Terms and Conditions, solely relevant for all legal relationships between Seller and Client. The legal relationships include, among other things, the production, delivery, service descriptions and the purchase price of the delivery items.
- 2.3 The Client may accept offers from the Seller within two weeks of receipt of the offer. An acceptance of the Client after this date is delayed and does not lead to a conclusion of the contract unless the Seller expressly agrees to the validity of the acceptance in writing.
- 2.4 The Seller's information on the subject of the delivery or service (e.g., weights, dimensions, utility values, load capacity, tolerances and technical data) as well as illustrations (e.g., drawings and illustrations) shall be only indicative, unless the suitability for the contractually intended purpose presupposes an exact match. They are not guaranteed characteristics, but descriptions or markings of the delivery or service. Customary deviations and deviations due to legal regulations or technical improvements, as well as the replacement of

components with equivalent parts are permitted, insofar as they do not impair the usability for the contractually intended purpose.

## 3 PRICES

- 3.1 The purchase prices that apply to the scope of services and delivery items are those specified in the order confirmations and is subject to such changes and amendments catered for, alternatively contemplated, in this General Terms and Conditions.
- 3.2 All purchase prices:
- 3.2.1 are calculated ex works; and
- 3.2.2 are subject to an annual increase to accommodate inflation, effected on 1 January of each year; and
- 3.2.3 exclude additional or special services, which will be charged separately, packaging, the statutory value added tax, for export deliveries also customs and fees, as well as other public taxes; and
- 3.2.4 unless expressly agreed otherwise, does not include VAT or other taxes levied or incurred in the course of production, material supply or delivery of the delivery items; and
- 3.2.5 is subject to change to cater and/or accommodate any change in pricing of any components required to execute the scope of services.
- 3.3 In addition to the purchase price the Client shall bear the cost of:
- 3.3.1 all taxes incurred as a result of the supply of taxable material and the delivery of the delivery items; and
- 3.3.2 any new features, or options not in existence or unavailable at the time of the specification publication, but available at the date of manufacture, may also affect the price (*in addition to the overall inflation price increase*).

## 4 PAYMENT

- 4.1 The purchase price is to be paid by the Client to the Seller in accordance with the payment terms of the offer letter.
- 4.2 As soon as the purchase price or a part of it becomes due, the Seller shall issue an invoice to such effect.
- 4.3 Invoice amounts shall be paid within thirty days without any deduction, unless otherwise agreed in writing. The receipt of payment by the Seller is decisive on the time of receipt of payment. Payment by cheque is excluded unless it is agreed separately in individual cases. If the Client fails to settle the purchase price or any portion thereof on the due date in question, the outstanding amounts shall bear interest, from the

due date until the payment is received, at a rate of 5 % above the base rate for a consumer, and 9 % above the base rate for a trader; the assertion of higher interest and further damages in case of delay remains unaffected.

4.4 All payments made by the Client:

4.4.1 are payable in the currency indicated in the offer letter;

4.4.2 initially serve to settle interest and/or costs and/or expenses incurred. Only then does the remaining balance, if any, serve the full or partial settlement of the purchase price.

4.5 Discounts are only permitted if there is a written agreement between the Seller and the Client to such effect.

4.6 The right to withhold payments or to offset them with counterclaims shall only be granted to the Client insofar as its counterclaims are undisputed or have been established as legally binding. The Client is only entitled to assert rights of retention on the basis of counterclaims resulting from the same contractual relationship.

## **5 SERVICE DESCRIPTION, PRODUCTION, DELIVERY & DELIVERY TIME**

### **5.1 Specifications, modifications, changes:**

5.1.1 After the Seller receives the order confirmation, the Seller will open a customer file for the Client.

5.1.2 The Seller shall assign one of its employees to the Client, who shall be responsible for completing the Client's customer file in consultation with the Client. The customer file serves the purpose of fully including the specifications of the contracting terms at that time.

5.1.3 All service specifications must be entered in the customer file; subject to the approval and acceptance by the Seller.

5.1.4 The inclusion of the service specifications in the customer file shall be subject to the following conditions:

5.1.4.1 all essential features must be definitively established by the Seller no later than two weeks before the start of production;

5.1.4.2 the Seller are required to notify the Client of the last possible date for the selection and modification of colour and instrument options; provided that such date shall always be no later than two weeks before the start of production;

5.1.4.3 the Client's failure to select an option within the aforementioned time limits has the effect that the glider is manufactured by the Seller in accordance with the usual specifications of the type selected by the Client.

5.1.4.4 where appropriate, additional costs shall be incurred if the contracting authority after that date initiates changes in the execution.

5.1.5 If the Client requires modifications and/or changes to the service description specified in the customer file, these must be transmitted to the Seller in text form.

5.1.6 All modifications and/or changes, which the Client advise to the Seller through a letter of change, are subject to the approval of the Seller and only becomes binding upon the Seller's approval of the content. In this case, the modifications and/or changes will be included in the customer file.

5.1.7 If the modifications affect the purchase price, the Seller will adjust the purchase price accordingly, with the aim of implementing the desired changes.

### **5.2 Electronics, instruments & equipment**

5.2.1 The Seller undertakes to offer any avionics and on-board instruments, to the Client, at the list prices of the respective manufacturers applicable at the time of the start of production of the glider.

5.2.2 Costs incurred by setting up particularly complex on-board electronics and/or due to special requests entitle the Seller to adjustment the purchase price in the amount resulting from additional costs incurred in the premise. The price adjustment shall be deemed to have been approved by the Client if it does not object to the adjustment in due time. The Seller is obliged to inform the Client of the purchase price adjustment and to expressly point out the possible consequences in the absence of an objection. The objection shall be made in due time if it is received by the Client within fourteen working days of receipt of the notification of the purchase price adjustment.

5.2.3 If the Client provides the board electronics or instruments required for production themselves, the Seller shall charge an additional 15% handling fee, based on the purchase price of the respective board electronics or instruments. This handling fee is charged to cover handling, storage and delivery costs. However, the handling fee does not include the costs, expenses and fees contemplated in Section 3.

5.2.4 In principle, the final determination of the Client must be based on the available choice of board electronics, on-board instruments and on-board equipment no later than 20 weeks before the end of production in South Africa. Any stipulations in this context will only be followed by the Seller if the stipulations have been fully incorporated in the customer file. If the deadline of twenty days is not met, the glider is produced solely according to the performance specifications specified in the customer file. Subsequent changes to the

service description in the customer file may result in further costs.

5.2.5 If the Client orders the installation of instruments and/or electronics not listed by the Seller, the Client must ensure their approval and certification and ensure timely availability of the parts. The installation of such instruments and/or electronics may result in additional installation fees if the cabling has to be changed or special work has to be done on the panels.

5.2.6 The Seller negotiates himself or mediates through one of his employees with his engineering team about the board electronics and the on-board instruments desired by the Client, as well as about the arrangement of the instrument pairs. It shall also coordinate further action and have a drawing drawn up for inspection and approval by the Client. The Seller himself or his employees are in contact with the Client on questions of the selected essential features, the assignment of a registration number and contest ID, as well as the other aspects regulated in the basic specification.

### 5.3 **Production, delivery and delivery time:**

5.3.1 The production of a glider shall not commence until the customer file has been drawn up and is complete and the Client has paid the down payment specified in the payment schedule of the contract.

5.3.2 For the production and delivery of the glider, the Seller guarantees compliance with all applicable laws and the production of gliders in accordance with the specifications chosen by the Client.

5.3.3 The Seller shall make every effort to complete the glider by the expected date of completion or earlier.

5.3.4 The Seller is entitled to execute or provide outstanding deliveries or services only against advance payment or security, if he becomes aware of circumstances after conclusion of the contract, which are suitable to substantially reduce the creditworthiness of the Client and by which the payment of the Seller's outstanding claims by the Client from the respective contractual relationship are affected (including from other individual contracts to which the same framework contract applies).

5.3.5 Compliance with the delivery and/or service deadlines contracted by the Seller requires the final clarification of all business and technical issues between the parties at the time the delivery deadline is set; for this purpose, the contracting authority must fulfil all its obligations in due time. Should this

not be the case, or if subsequent changes have been agreed, the Seller can, without prejudice to his rights from default of the Client, extend the delivery and service periods or postpone delivery and performance dates by the period in which the Client fails to fulfil his contractual obligations to the Seller or the changes make an extension necessary.

5.3.6 The deadlines and dates for deliveries and services promised by the Seller are only estimated dates, unless a fixed deadline or a fixed date has been expressly promised or agreed. If a shipment purchase has been agreed, the delivery periods and delivery dates refer to the time of delivery to the freight forwarder, freight forwarder or to the third party otherwise commissioned with the transport.

5.3.7 The Seller is entitled to delegate his tasks and duties to subcontractors without the consent of the Client. By subcontracting his obligations, the Seller is released from his obligations towards the Client.

## 6 **QUALITY INSPECTION, INFORMATION & COMPLETION**

### 6.1 **Quality inspection:**

The Seller performs the quality inspection on the glider or other objects within the scope of the measures to be taken in the normal production process on the delivery object.

### 6.2 **Information:**

In the course of production, the Seller shall inform the Client of the progress of production of the glider, as well as any reasons preventing the Seller from fulfilling his obligations in a timely manner, and any similar matters, which could influence or affect the order and/or the performance of the Seller's obligations.

### 6.3 **Completion:**

6.3.1 After completion of a glider, the Seller must supervise and conduct the required test flights.

6.3.2 After all successful test flights, the Seller shall inform the Client that the glider has been inspected and is ready for delivery.

## 7 **DELIVERY & SHIPPING**

### 7.1 **Delivery:**

7.1.1 The glider will be delivered "Ex Works (EXW)" at the location specified in the letter of offer. This location is also the place of performance for the delivery and any subsequent performance.

7.1.2 The Seller undertakes to inform the Customer of the date on which the glider can be delivered, either at the same time as

the dispatch of the completion report or as soon as possible thereafter. The notification shall always include a two-week period from the date of receipt of the notification, after which the earliest possible date of delivery may be set.

7.1.3 Delivery shall be deemed to have taken place on the day on which the glider leaves the site of the point of transfer or the Client fails to take delivery of the glider; in such cases, delivery shall be effected on the relevant date in the delivery note, provided that this precedes the previous date.

7.1.4 The Seller is entitled to partial deliveries and partial services at any time, provided this is reasonable to the Client.

7.1.5 If the Client is in default of acceptance or otherwise violates his obligations to cooperate, the Seller reserves the right to claim compensation for damages caused by such failure and, if applicable, additional expenses incurred against the Client, alternatuivey charged by the Seller.

7.1.5.1 If the delivery of the glider has been postponed at the request of the Client or if the Client is in default of acceptance with the acceptance of the same, the storage costs incurred by the Seller shall be charged to the Client at an amount equal to of 0,5 % of the purchase price per week elapsed, until the Client physically takes delivery of the delivery item. The assertion and proof of further or higher storage costs remain reserved.

7.1.5.2 After the unsuccessful expiry of a reasonable period of time, the Seller shall be entitled to dispose of the delivery item in such manner as the Seller deems fit and appropriate.

#### 7.2 **Shipping:**

7.2.1 At the Client's request and expense, the delivery times will be shipped to a different destination (shipment purchase). The delivery takes place from the location according to the specifications in the offer letter. Unless otherwise agreed, the Seller is entitled to determine the type of shipment (in particular transport company, shipping route, packaging); provided that the Client shall bear the ex works transport costs and the costs of any desired transport insurance. Any customs duties, fees, taxes and other public charges shall be borne by the Client.

7.2.2 The Seller shall insure the shipment against theft, breakage, transport, fire and water damage or other insurable risks only at the express request of the Client and at the Client's expense.

#### 7.3 **Packaging:**

The packaging is at the discretion of the Seller. The Seller shall not take back any transport materials and other packaging unless he has agreed to do so in writing.

### **8 TRANSFER OF RISK :**

8.1 The risk shall pass to the Client if the delivery item has left the dispatch location, even if partial deliveries are made or the Seller has assumed other services, such as shipping costs or delivery and installation. Insofar as acceptance has to take place, this is decisive for the transfer of risk. It must be carried out immediately on the date of acceptance, alternatively after the Seller has notified the readiness for acceptance. The Client may not refuse acceptance in the event of a non-essential defect.

8.2 If the handover or acceptance is delayed or omitted as a result of circumstances not attributable to the Seller, the risk shall pass to the Client from the date of notification of the provision of the delivery item. In the case of dispatch of the delivery item § 447 BGB applies.

### **9 RETENTION OF TITLE**

9.1 The Seller shall retain ownership of the delivery item until all payments have been received under the contract, including, if applicable, for the delivery item, additional services owed - from the delivery contract.

9.2 The Seller shall be entitled to insure the Client's costs of delivery against theft, breakage, fire, water and other damage, unless the Client has demonstrably taken out the insurance himself.

9.3 The Client may neither sell, pledge nor assign the delivery item as security. In the event of seizures, seizures or other orders by third parties, the Client shall immediately notify the Seller thereof.

9.4 In the event of a breach of contract by the Client, in particular in the event of default in payment, the Seller shall be entitled to take back the delivery item after a reminder and the Client shall be obliged to surrender it.

9.5 Due to the retention of title, the Seller can only demand the delivery item if he has withdrawn from the contract.

9.6 The application for the opening of insolvency proceedings on the part of the Client entitles the Seller to withdraw from the contract and to demand the immediate return of the delivery item.

### **10 WARRANTY**

10.1 The following warranty provisions shall apply to a person who, when concluding the contract, deals with the exercise of his commercial or self-employed professional activity (entrepreneur), to the exclusion of further claims:

**Material defects:**

- 10.1.1 Notwithstanding section 1 paragraph 3 of the German Civil Code, the general limitation period for claims arising from material defects and defects of title is one year from delivery. As far as an acceptance is agreed, the limitation period begins with the acceptance. This period shall not apply to claims for damages by the Client arising from injury to life, body or health or from intentional or grossly negligent breaches of duty by the Seller or his vicarious agents, which expire in accordance with the statutory provisions.
- 10.1.2 The delivered items must be carefully inspected immediately after delivery to the Client or to the third party designated by him. They shall be deemed to have been approved by the Client with regard to obvious defects or other defects which would have been recognisable in the event of an immediate, careful inspection if the Seller does not receive a written notice of defects within seven working days of delivery. With regard to other defects, the delivery items shall be deemed to have been approved by the Client if the notice of defect is not received by the Seller within seven working days of the date on which the defect was discovered; the defect was already evident at an earlier point in time in normal use, but this earlier point in time is decisive for the commencement of the notice period.
- 10.1.3 The subsequent performance due may be made dependent on the Client paying the purchase price due. However, the Client is entitled to retain a reasonable part of the purchase price in relation to the defect.
- 10.1.4 In order to carry out all repairs and replacement deliveries which the Seller deems necessary, the Client shall, after having communicated with the Seller, grant the Seller the necessary time and opportunity; otherwise the Seller is exempt from liability for the resulting consequences.
- 10.1.5 In case of defects of components of other manufacturers, which the Seller cannot eliminate for licensing or factual reasons, the Seller shall, at his discretion, assert his warranty claims against the manufacturers and suppliers on behalf of the Client or assign them to the Client. Warranty claims against the Seller in the case of such defects under the other conditions and in accordance with these General Terms and Conditions of Sale only exist, if the judicial enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or, e.g. due to insolvency, is hopeless. During the duration of the legal dispute, the limitation period

of the relevant warranty claims of the Client against the Seller is suspended.

- 10.1.6 There is no liability for defects in the case of inappropriate or improper use, faulty assembly or assembly. commissioning, incorrect or negligent handling or improper maintenance, whether carried out by the Client or by third parties, as well as when selecting an unsuitable or improper way of setting up or using unsuitable equipment - provided that these are not the responsibility of the Seller himself. The warranty shall also be waived if the Client changes the delivery item without the consent of the Seller or has it changed by third parties and the rectification of defects is made impossible or unreasonably difficult.
- 10.1.7 A delivery of used objects agreed in individual cases with the Client shall be made under exclusion of any warranty for material defects.

**Defects in title:**

- 10.1.8 In the event that the object of delivery infringes an industrial property right or copyright of a third party, the Seller shall, at his discretion and at his expense, modify or replace the object of delivery in such a way that no rights of third parties are infringed any more. However, the delivery item continues to fulfil the contractually agreed functions or grant the Client the right of use by concluding a license agreement with the third party. If the Seller fails to do so within a reasonable period of time, the Client shall be entitled to withdraw from the contract or to reduce the purchase price accordingly. Any claims for damages by the Client are subject to the limitations of section 11.1 of these General Terms and Conditions.
- 10.1.9 In the event of infringements by products of other manufacturers supplied by the Seller, the Seller shall, at his discretion, assert his claims against the manufacturers and suppliers on behalf of the Client or assign them to the Client. Claims against the Seller only exist in these cases if the judicial enforcement of the above-mentioned claims against the manufacturers and suppliers was unsuccessful or, e.g. due to insolvency, is hopeless.
- 10.1.10 A Client who acts as a consumer at the conclusion of the contract is entitled to statutory rights in the event of defects in the delivery items.

**11 LIABILITY**

- 11.1 The following liability provisions shall apply to a person who, when concluding the contract, acts in the exercise of his commercial or independent professional activity (entrepreneur):

- 11.1.1 The liability of the Seller for damages, regardless of the legal reason, in particular. Due to impossibility, default, defective or incorrect delivery, breach of contract, breach of obligations in contract negotiations and tort, insofar as this depends on fault in each case, is limited in accordance with this section 11.1.
- 11.1.2 The Seller shall not be liable in the event of simple negligence on the part of its organs, legal representatives, employees or other vicarious agents, insofar as this is not a violation of essential contractual obligations.
- 11.1.3 Insofar as the Seller is liable for damages on the ground, this liability is limited to damages that the Seller has foreseen at the time of conclusion of the contract as a possible consequence of a breach of contract or that he should have foreseen when applying customary care. Indirect damages and consequential damages resulting from defects of the delivery item are also only substitutable insofar as such damages are typically to be expected when the delivery item is used as intended.
- 11.1.4 The above liability exclusions and limitations shall apply to the same extent for the benefit of the Seller's organs, legal representatives, employees and other vicarious agents.
- 11.1.5 Insofar as the Seller provides technical information or acts in an advisory capacity and this information or advice does not belong to the contractually agreed scope of services owed by him, this is done free of charge and with the exclusion of any liability.
- 11.1.6 The limitations of this Section 11.1 shall not apply to the Seller's liability for wilful conduct, guaranteed characteristics, injury to life, limb or health, or under the Product Liability Act.
- 11.2 The following provisions shall apply to a contracting entity acting as a consumer at the time of conclusion of the contract:
- 11.2.1 Claims for damages by the Client due to obvious material defects of the delivered delivery items are excluded if he does not notify the defect within a period of two weeks after delivery of the goods.
- 11.2.2 The liability of the Seller for damages, regardless of the legal reason (in particular in case of default, defects or other breaches of duty) is limited to the contract-typical, foreseeable damage.
- 11.2.3 The above limitation of liability for consumers according to 11.2 does not apply to the liability of the Client due to intentional behavior or gross negligence, for guaranteed

characteristics, for injury to life, body or health or under the Product Liability Act.

## **12 SOFTWARE USE**

Insofar as software is included in the scope of delivery, the Client is granted a non-exclusive right to use the supplied software including its documentation. It is left for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.

The Client may only reproduce, revise, translate or convert the software from the object code into the source code to the extent permitted by law (§ 69 a ff. The Client undertakes not to remove manufacturer information - in particular copyright notices - or to change it without the prior express consent of the Seller.

All other rights to the software and the documentation, including copies, shall remain with the Seller or the software supplier. Sub-licensing is not permitted.

## **13 INTELLECTUAL PROPERTY**

The Seller retains the ownership or copyright of all offers and cost estimates submitted by the Seller as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids. The Client may not make these objects accessible as such or in terms of content to third parties, disclose them, use them himself or by third parties or duplicate them without the express consent of the Seller. At the Seller's request, the Client shall return these items in full to the Seller and destroy any copies made if they are no longer required by the Client in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. The exception to this is the storage of electronically provided data for the purpose of conventional data backup.

## **14 CONFIDENTIALITY CLAUSE**

The Client undertakes to obtain confidential information and trade secrets of the Seller during the production of the delivery item and referred to as such during the entire period of production and also for all periods thereafter: by any means whatsoever, whether directly or indirectly, for any purpose whatsoever, to any third party.

## **15 DISPUTE RESOLUTION IN CASE OF CONFLICT**

- 15.1 In the event of conflicts or disputes, both parties are obliged to achieve a dispute settlement through informal negotiations.
- 15.2 This means that:
- 15.2.1 all disputes shall first be reported to the Chief Executive Officer (CEO)" of the Seller (or one of his designated representatives); and
- 15.2.2 the "CEO" of the Seller (or one of his designated representatives) and the Client jointly attempt to: resolve the dispute within a period of twenty business days from the notification of the dispute by both parties or until a later date agreed by the parties.
- 15.3 Any dispute between the parties which could not be resolved within the meaning of Sections 15.1 and 15.2 shall be deemed to be irresolvable in out-of-court proceedings.
- 15.4 The provisions of this Section 15 shall not result in the loss of the right to require a particular service. They are merely a means of bringing disputes to an out-of-court settlement.
- 15.5 In the event the parties are unable to resolve the dispute, informally, the Seller will be entitled to, without prejudice to its rights and remedies cancel the order, by addressing written notice to the Client.

## **16 APPLICABLE LAW & JURISDICTION**

- 16.1 For all legal relationships between the Seller and the Client, the law of the Federal Republic of Germany shall apply exclusively to the legal relationships between domestic parties under exclusion of the conflict of laws provisions of the International Private law as well as the regulations of the UNPurchase rights (CISG).
- 16.2 If the Client is a merchant or has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any disputes arising from the business relationship between the Seller and the Client shall be the Seller's registered office. However, the Seller is entitled to file an action at the Client's registered office.
- 16.3 Priority legal provisions, in particular on exclusive competences, shall remain unaffected.

## **17 FINAL PROVISIONS (REGULATORY GAPS, DATA PROTECTION, CREDIT ASSESSMENT)**

- 17.1 Insofar as the contract or these General Terms and Conditions contain gaps in the rules, the legally valid rules shall be deemed to have been agreed in order to fill these gaps; which the contractual partners would have agreed in accordance

with the economic objectives of the contract and the purpose of these General Terms and Conditions if they had known the loophole.

- 17.2 The Seller collects, processes, stores and uses personal data of the Client for the processing and fulfilment of the concluded contracts. In addition, the Seller complies with the applicable data protection regulations, in particular the European General Data Protection Regulation (GDPR) as well as the Federal Data Protection Act (BDSG) and has taken technical and organizational measures, that the data protection regulations are observed by both the Seller and any external service providers. Further information on data protection, in particular on the rights of the Client, can be found at [www.jonkersailplanes.co.za/js-germany/impressum](http://www.jonkersailplanes.co.za/js-germany/impressum).
- 17.3 For the credit check, the Seller can use information (e.g., a so-called score value) from external service providers to help decide and make the payment method dependent on it.