



General Terms of Purchase

Issue: 12. November 2019

1. General information

- 1.1 These General Business Terms and Conditions ("Terms of Purchase") of 328 Support Service GmbH ("Orderer") shall apply for all natural persons or legal entities or partnerships with legal capacity, which act while performing their commercial or self-employed professional activity upon conclusion of the contract (Entrepreneurs) as well as legal entities under public law or a special fund under public law, all hereinafter ("Supplier") with the delivery respectively creation of products ("Delivered goods") or provision of services. With the contract the Supplier undertakes to make a delivery, this means to hand over the Delivered goods and to transfer the ownership to the Delivered goods to the Orderer insofar as no simple reservation of title was agreed. All deliveries, services and offers of the Supplier shall be exclusively carried out based on these General Terms of Purchase. They shall also apply to all future deliveries, services, offers or agreements between the Orderer and the Supplier, which substantiate an obligation for the delivery or provision of services by the Supplier, even if their validity has not been agreed separately once again.
- 1.2 Terms and conditions of the Supplier that deviate from or supplement these Terms of Purchase will not become a content of the contract, not even by the silence of the Orderer, reference to letters of the Supplier with such Business Terms and Conditions or by an acceptance of an offer without reservation, acceptance or use of services or Delivered goods without reservation or payment to the Supplier by the Orderer without reservation, even if the Orderer does not object or the Supplier declares that it only intends to deliver at its conditions.
- 1.3 Order and acceptance as well as their changes and supplementations shall require a written form. Oral collateral agreements upon conclusion of the contract are only effective if they have been confirmed by the Orderer in writing. This shall also apply to amendments to the contract after conclusion of the contract.
- 1.4 Insofar as the Orderer sends an enquiry to the Supplier and the Supplier has submitted an offer, the Orderer has the right to accept this offer within 14 calendar days after receipt by the Orderer. Decisive for the timely acceptance of the order by the Orderer is the receipt of the declaration of acceptance by the Supplier within the deadline.

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P.O. Box 12 52, 82231 Wessling, Tel. +49 (0) 81 53 / 88 111 - 0, Fax +49 (0) 81 53 / 88 111 - 5145, www.328.eu
Office building: Special airfield [Sonderflugplatz] Oberpfaffenhofen, 82234 Wessling // Register Court: Munich County Court, HRB NO. 159804, VAT ID No. DE246116667
Management: Anthony Shakesby, Dave Jackson

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Insofar as the Orderer submits an order without a corresponding offer of the Supplier the Supplier can accept the order within 14 calendar days. Otherwise, a contract will not be concluded. Decisive for the timely acceptance of the order by the Supplier is the receipt of the declaration of acceptance by the Orderer within the deadline.

- 1.5 The partial or full execution of the ordered deliveries and services by third parties shall require the written consent of the Orderer if and insofar as the execution of the order and a proper fulfilment is only permitted with an official or statutory authorisation.
- 1.6 The compliance with the respective procurement and product requirements, in particular official and / or statutory regulations, is to be ensured by the Supplier. This shall in particular apply to audits which may be necessary by regulatory authorities (EASA, LBA, FAA etc.). If the Supplier uses the services of third parties when carrying out the order then the Orderer also has to ensure this at subordinate suppliers. The obligations of the Supplier from a quality assurance agreement concluded with the Orderer shall remain unaffected hereby.
- 1.7 The Supplier shall permit the Orderer and/or its regulatory authority (EASA, LBA, FAA etc.) access to all equipment and associated records associated with the order during the normal business hours after reasonable prior announcement by the Orderer if and insofar as this is necessary at the dutiful discretion of the Orderer and/or the authority in order to enable the Orderer and/or the regulatory authority to comply with the official and/or statutory regulations.

2. Delivery date and place of services

- 2.1 The agreed delivery date is binding. Advance deliveries are only permitted with the Orderer's consent.
- 2.2 The receipt at the place of receipt stated by the Orderer together with the necessary, full and correct documentation shall be decisive for the punctuality of deliveries without assembly or installation.
- 2.3 Their provision in an acceptable condition together with the necessary, full and correct documentation shall be decisive for the punctuality of deliveries with installation or assembly as well as of services.
- 2.4 If the Supplier is in default the Orderer is entitled to request a contractual penalty of 0.5% of the order value per started week, a maximum however of 5% of the order value.

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The contractual penalty is to be offset against the damages on default to be compensated for by the Supplier. The Orderer can request the contractual penalty if it reserves the right hereto no later than by the expiry of one month after the acceptance of the last deliveries or services to be provided within the scope of the order.

- 2.5 The place of performance for deliveries or services of the Supplier is the place of receipt stated in the order. If a place of receipt is not stated and if this cannot be derived from the nature of the contractual obligation either, the registered seat of the Orderer shall be deemed as the place of performance. The registered seat of the Orderer is the place of performance for payment obligations of the Orderer.

3. Shipment, insurance and pricing

- 3.1 Objects of delivery are to be packed and shipped properly. Packaging and shipping regulations of the Orderer are to be complied with. Shipping documents, such as delivery notes and packing slips, are to be enclosed with the deliveries. The order numbers and the codes of the Orderer required in the order are to be stated in all written documents. A A dispatch note is to be forwarded to the Orderer no later than on the day of the shipment.
- 3.2 Additional costs incurred to the Orderer by the non-compliance with the aforementioned regulations shall be for the expense of the Supplier.
- 3.3 The transport shall be insured by the Orderer. Costs of possible transport insurances arranged for by the Supplier will not be reimbursed by the Orderer.
- 3.4 The Supplier undertakes for the objects of delivery at its own costs for a period of at least three years after their respective delivery (i) to conclude and maintain business liability - and extended product liability insurance with a reasonable sum insured per damaging event, however at least EUR 1 million (and with the customary maximisation, at least twice), and (ii) recall costs liability insurance with a reasonable sum insured per recall, however at least EUR 1 million (and with at least simple maximisation) and to send a copy of the respective insurance policy to the Orderer upon request.
- 3.5 Insofar as not otherwise agreed FCA (Incoterms 2020) shall apply for all prices.

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4. Invoice and payment, ban on assignment

- 4.1 The invoice shall be issued as a single document and must depict all details required in the order for each delivery.
- 4.2 Insofar as not otherwise agreed the payment shall principally be made by bank transfer or cheque, after acceptance or delivery as well as the receipt of the invoice within 15 days with 3% cash discount, within 30 days with 2% cash discount or within 90 days net.
- 4.3 The deduction of cash discount is also permitted in case of offsetting or retention owing to defects. The time of the declaration by the Orderer shall be decisive.
- 4.4 The Supplier is not entitled to assign its claims against the Orderer or to have these collected by a third party without its written consent. This shall not apply to the extended reservation of title for monetary claims insofar as the contract is a trading business for both parties, thus a business of a merchant that belongs to its trading enterprise. Section 354a HGB [German Commercial Code] shall remain unaffected.

5. Claims due to defects, damages and statute-of-limitations

- 5.1 The Supplier has to hand an object of delivery over to the Orderer free of material defects and defects of title. This shall in particular also include the ability to use the object of delivery, insofar as this is known to the Supplier or can be derived from the order or other information (Subclause 7.1). The Supplier undertakes to procure the ownership to the object for the Orderer insofar as no simple reservation of title was agreed for the specific object of delivery between the Orderer and the Supplier.
- 5.2 The claims due to defects of the Orderer are oriented to the law. The same shall apply to claims for damages as well as to the regulations relating to the statute-of-limitations of claims owing to defects and damages.
- 5.3 Defects are to be reported to the Supplier in writing without delay as soon as they are determined according to the conditions of a proper business flow. The statute-of-limitations of claims due to defects shall be inhibited with the receipt of the written report of defects by the Supplier.

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- 5.4 In case of failure or refusal of the subsequent fulfilment respectively in case of the non-provision of services within a reasonable deadline set by the Orderer the Orderer shall also be entitled to substitute execution at the Supplier's costs. The Orderer can be deemed the subsequent fulfilment as failed if the second attempt at remedying defects was also unsuccessful.
- 5.5 In case of a substitute delivery and remedy of defects the warranty period for replaced and subsequently improved parts shall begin to apply once again, unless it was clear for the Orderer that the substitute delivery or remedy of defects was only carried out for reasons of goodwill or similar reasons.

6. Property rights

- 6.1 The Supplier guarantees that it shall not infringe any property rights, in particular by virtue of patent or copyright law of third parties in Germany or any other country, in which it has products produced or services provided in connection with its delivery or service.
- 6.2 The Supplier undertakes to indemnify the Orderer from all claims, asserted by third parties against the Orderer owing to the infringement of industrial property rights stated in Paragraph 1, and to reimburse the Orderer all necessary expenses in connection with the assertion of this claim. This claim shall exist irrespective of a fault of the Supplier.

7. Obligations for notification and to apply due care and attention

- 7.1 If the Orderer has informed the Supplier about the intended use of the deliveries or services, or if this intended use is also recognisable for the Supplier without an explicit notification, then the Supplier is obliged to inform the Orderer without delay if the deliveries or services of the Supplier are not suitable for fulfilling this intended use or if it requires further information for this assessment.
- 7.2 Circumstances, which jeopardise the adherence to agreed delivery dates, are to be reported to the Orderer in writing without delay in order to clarify the further procedure. The statutory regulations relating to default shall apply.
- 7.3 The Supplier has to report to the Orderer any changes to the type or composition of the processed material or the constructive design compared to equivalent deliveries or services provided to the Orderer. The changes shall require the written consent of the Orderer.

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- 7.4 The Supplier has to ensure that the deliveries and services satisfy the environmental protection, accident prevention and other occupational safety regulations, safety-related regulations as well as all legal requirements applicable in the Federal Republic of Germany with regard to the object of contract and has to inform the Orderer of special requirements regarding treatment and disposal that are not generally known, with each delivery. In addition, the Code of Conduct of the Orderer shall apply, which the Supplier is obliged to comply with. The Orderer is entitled to change this Code of Conduct at its reasonable discretion and will inform the Supplier of corresponding changes. The Orderer expects the Supplier to accept reasonable changes.
- 7.5 In case of a cross-border delivery or service the Supplier shall guarantee that all stipulations of the export control of the country, in which the Supplier is based or from where it provides the service, shall be complied with and all permits that are required there will be obtained. The same shall apply in the event of deliveries through a territory. This shall in particular apply to all deliveries or services which are subject to ITAR restrictions. ITAR-restricted documents or data are to be secured accordingly (e.g. sealed envelope) and to be delivered marked accordingly and clearly. Should it be necessary for the Orderer to provide an act of assistance in this respect the Supplier will point this out to the Orderer in time and do everything that is possible and deemed reasonable for it in order to support the Orderer with this act of assistance. The Supplier will additionally make all information available to the Orderer pertaining to re-export regulations, which could be of relevance for the Orderer according to the Supplier's knowledge and provide reasonable free support to the Orderer with the fulfilment of possible export conditions, in particular by providing information and submitting necessary declarations. If the support measures exceed that which is deemed reasonable the Supplier is also obligated to take further corresponding measures, at the explicit request of the Orderer, if the Orderer assumes the reasonable costs incurred to the Supplier hereby.
- 7.6 The Supplier undertakes to forward all information about determined or presumed defects to the objects delivered or provided to the Orderer as well as possible doubts about the usability ("suspected unapproved parts"), even if it only notices or receives these from third parties after an already carried out delivery or service to the Orderer, without delay to the Orderer. The Supplier is moreover obliged to inform the Orderer about necessary measures (for example a recall action), which are to be taken in connection with determined or presumed defects, without delay and to support the Orderer hereby to a reasonable extent. Section 377 HGB shall remain unaffected hereby.

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8. REACH conformity and information obligation

- 8.1 The Supplier undertakes, relating to the goods delivered to the Orderer, to comply with the REACH Regulation (Regulation EC No. 1907/2006). It in particular guarantees that the delivered goods do not contain any substances of the respective current candidate list of the European Chemicals Agency ECHA in a quantity exceeding 0.1% weight by weight (SVHC – Substances of Very High Concern). If the Supplier delivers goods in an individual case, which contains an SVHC substance, it is obliged to point this out to the Orderer separately and in a written form with the delivery. The Supplier undertakes to have all delivered substances registered itself or by sub-suppliers, if it is responsible for registration obligations according to REACH. If the Supplier is not liable to registration itself according to the REACH Regulation, it shall obligate its sub-suppliers to comply with their obligations according to REACH or shall ensure the registration by a sole representative, which corresponds with the stipulations of Art. 8 of the REACH Regulation. A registration carried out by the Supplier or its sub-supplier or a sole representative of the Supplier relating to the delivered goods is to be proven towards the Orderer upon request in writing. If the delivered substances concern so-called "Phase-in-substances", the Supplier undertakes to prove the pre-registration of the substance to the Orderer.
- 8.2 The Supplier shall ensure that, if goods delivered by it contain substances that fall under REACH (in particular SVHC substances), these are registered in line with REACH. It undertakes to send all information and documentation that are necessary owing to the Regulation (in particular according to Art. 31 et seqq. of the REACH Regulation) to the Orderer within the deadlines envisaged in REACH or to forward the information of its sub-supplier to the Orderer without delay.
- 8.3 If claims are asserted or sanctions imposed against the Orderer owing to the breach of the REACH regulations by customers or authorities, which is a results of a product of the Supplier then the Orderer is entitled to request indemnification from the Supplier from these claims or compensation of the damages, which the Supplier culpably caused by the failure to confirm to REACH or which are to be attributed to the Supplier.

9. Provision of materials

- 9.1 Objects of all kinds handed over to the Supplier by the Orderer shall remain the property of the Orderer. They may exclusively be used to provide the ordered deliveries and services.

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- 9.2 The Supplier undertakes to hold the objects carefully in safekeeping, to carry out possibly necessary maintenance and inspection work at its own costs as well as to sufficiently insure the provided objects and to prove this towards the Orderer upon request.
- 9.3 Insofar as objects provided by the Orderer are processed or converted by the Supplier to form a new movable object, the Orderer shall be deemed as the manufacturer. In the event of a connection or inseparable mixing with other objects the Orderer shall acquire co-ownership to the new object in the ratio of the value, which the objects had at the time of the connection or mixing. If the connection or mixing is carried out to the extent that the objects of the Supplier are to be seen as the main object then it is deemed as agreed that the Supplier shall assign pro rata co-ownership to the Orderer; the Supplier shall hold the co-ownership in safekeeping for the Orderer.

10. Confidentiality

- 10.1 The Supplier undertakes to keep commercial and technical information and documents that are not general knowledge, of which it becomes aware due to the business relationship, in particular all information contained in the order and possible annexes, insofar as these are not general knowledge, secret by using sufficient technical and organisational measures, not to disclose these towards third parties without the prior explicit consent of the Orderer and to exclusively use these to provide the ordered deliveries and services. Insofar as the Orderer has granted a consent, possible sub-suppliers are to be obligated accordingly by the Supplier. A disclosure is permitted for the Supplier if and insofar as this is necessary for the fulfilment of official or statutory regulations or directly enforceable official or court dispositions.
- 10.2 The Supplier may only name the corporate name or trademarks of the Orderer when providing references or with publications if it has approved this previously in writing.

11. Spare parts and willingness to deliver

- 11.1 The Supplier undertakes to supply spare parts for the period of time of the customary technical use, at least however for 10 years after the last delivery at reasonable conditions, unless less than five aircraft are in operation worldwide of the aircraft type, which the objects of delivery serve.

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11.2 If the Supplier discontinues the delivery of the spare parts after expiry of the deadline stated in Section 10.1 or the delivery of the object of delivery during this deadline then the Orderer is to be given the opportunity to place a last order at reasonable conditions.

12. Severability clause, place of jurisdiction and applicable law

- 12.1 If regulations of these Terms of Purchase or of the contract are invalid in full or in part, then these Terms of Purchase or the contract shall remain valid on the whole. The same shall apply in the event of the unworkability of a regulation of the contract or these Terms of Purchase.
- 12.2 If the Supplier is a merchant, legal entity under public law or a special fund under public law, then - also for proceedings relating to cheques and bills of exchange - the registered seat of the Orderer shall be the exclusive place of jurisdiction for all disputes that arise from or in connection with the contract or these Terms of Purchase. The same place of jurisdiction shall apply if the Supplier does not have any general place of jurisdiction in the Federal Republic of Germany at the time when court proceedings are initiated. The Orderer is however entitled to also file an action at the respective registered seat of the Supplier if the Supplier is a merchant, legal entity under public law or a special fund under public law.
- 12.3 The law of the Federal Republic of Germany shall apply. The Convention of the United Nations of 11 April 1980 on Contracts for the International Sale of Goods (CISG) shall not apply.

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