

# General Terms and Conditions of Purchase of Fokker ELMO B.V., deposited at the Chamber of Commerce of Breda, on April 1, 2011

## 1. Definitions

Unless expressly stated otherwise, in these General Terms and Conditions of Purchase the following expressions have the following meaning:

'Fokker' means Fokker ELMO B.V., including its subsidiaries.

'Supplier' means the entity that is provided with a request for quotation and/or an Order by Fokker.

'Customer' means the entity to whom Fokker delivers products and/or provides services in which the Goods will be incorporated.

'Order' means Fokker's purchase order, which includes:

- these General Terms and Conditions of Purchase; and
- the Fokker delivery instructions; and
- any other documents and regulations that are referred to in the Order as being applicable.

'Goods' means the items and/or services to be supplied by the Supplier to Fokker pursuant to an Order.

## 2. Applicability

These General Terms and Conditions of Purchase shall apply, with the express rejection of the Supplier's general terms and conditions, to the entire legal relationship between Fokker and the Supplier with regard to the supply of Goods to Fokker, including requests for quotations and future contracts.

Additions to and/or deviations from these General Terms and Conditions of Purchase are only binding if and to the extent they are expressly agreed in writing by Fokker and Supplier.

## 3. Order and confirmation

A binding agreement comes into existence by means of Fokker forwarding the Order. The Supplier shall confirm receipt of the Order within 7 calendar days of receipt.

## 4. Price and payment

Prices listed in the Order are fixed, exclusive of VAT but inclusive of all other taxes, costs and fees required to comply with the Order. The payment term will be 90 calendar days after receipt and visual inspection of the Goods as per article 10 hereof, provided Fokker has received a correct invoice complying with the invoicing instructions and had not sent a notice of Non-conformity as per Article 10 hereof. Payment does not constitute acceptance of the Goods. In the event of delivery and invoicing of Goods before the agreed delivery date, the payment term shall commence as originally agreed. Any dispute regarding an Order does not entitle the Supplier to suspend delivery or performance of its other obligations. Fokker is entitled to set-off or compensate any claim Fokker may have under an Order or any other contract on the Supplier against any amount due by Fokker to Supplier.

## 5. Certificates

The Goods shall be supplied with all relevant certificates and documents as stipulated in the Order. The absence of one or more of these certificates and/or documents shall constitute a material breach of the Order, which prevents the acceptance of the Goods.

## 6. Inspection

Fokker and its Customers and/or supervisors are entitled to inspect and/or examine the Goods or items destined to be part of the Goods, the work and the organisation of the Supplier and to exercise progress control at any time. The Supplier shall offer all reasonable assistance for this, shall allow access to any location(s) where the work is carried out and shall, if requested, produce test reports and other production information for inspection. If the Supplier has been granted permission under article 7 to employ subcontractors or involve other suppliers for the purpose of an Order, the Supplier shall impose the stipulations of this article 6 on those subcontractors or suppliers for the benefit of Fokker and its Customers and/or supervisors. If, at the time of inspection, it is shown that the Goods do not meet the specifications of the Order, or if it can reasonably be expected that the Goods will not meet the specifications of the Order, Fokker is entitled to reject the Goods and the Supplier shall within the timeframe directed by Fokker present a recovery plan setting out measures, to be taken at the Supplier's expense, to ensure that the Order shall still be complied with, without prejudice to any of Fokker's rights. Inspection, rejection or failure by Fokker to do so shall not constitute acceptance of the Goods.

## 7. Subcontracting

Other than with Fokker's express prior written consent, the Order or part thereof shall not be executed by subcontractors and/or other suppliers. Such consent shall not reduce or limit the Supplier's responsibility for the proper performance of its obligations under an Order. In case Fokker approves subcontracting, the Supplier shall be responsible for the flow down of these terms and conditions to its subcontractors. Supplier shall procure in its subcontracts that in case of termination of an Order, Fokker may require the Supplier to transfer any of Supplier's subcontracts to Fokker.

## 8. Changes

Fokker has the right to change Fokker's specifications and configuration of the Goods and the Supplier shall carry out these changes upon receipt of written instructions to do so. If the Supplier proves, within 7 calendar days of receipt of the instruction and to Fokker's satisfaction, that the change will affect the price or delivery time and that the change is not caused by or contributed by the Supplier, the parties can discuss an adjustment to the price and/or delivery time during which Fokker's and the Supplier's obligations are not suspended.

Fokker has the right, in writing or electronically, to change the quantity of Goods and/or the delivery date(s) and/or to cancel the Order in whole or in part. Up to 4 calendar weeks before the original delivery date such change or cancellation shall be at no cost to Fokker. Up to 2 weeks before the original delivery date Fokker has the right to suspend, in whole or in part, delivery of the Goods at no cost to Fokker.

## 9. Delivery

The Supplier shall deliver the Goods, including the required certificates and documents, in accordance with Fokker's delivery and packaging instructions and on the date stipulated in the Order. With the exception of force majeure, if the Supplier fails to comply with its delivery obligations, the Supplier shall pay to Fokker, without further notice of default being required, by way of penalty which shall not be in lieu of actual damages suffered (in) directly by Fokker, an amount of 3% of the Order price for every calendar week or part thereof that the delay continues, to a maximum of 15% of the Order price. Payment of such penalty is without prejudice to Fokker's rights under the Order or at law, including but not limited to Fokker's right to claim payment of the actual damages suffered and/or to terminate the Order in whole or in part. The Supplier shall immediately notify Fokker in writing on any foreseeable delay to a delivery. If the Supplier fails to do so he will not be able to claim force majeure in the matter. Any default on the part of the Supplier's suppliers / subcontractors will never be regarded as force majeure.

Unless stipulated otherwise in the Order, the delivery of the Goods will be Free Carrier (FCA) at Fokker (Elmo) nominated hub in accordance with Incoterms (latest edition) and with due observance of the passing of risk as set out in article 10 hereunder.

## 10. Acceptance / Passing of Title and Risk

Fokker will visually inspect the Goods for any shortfalls, missing, incomplete or incorrect certificates or documents, visible deficiencies and damage ("Non-conformity") within a reasonable period after delivery. If in Fokker's opinion there is a Non-conformity, Fokker will notify the Supplier, in writing and no later than 60 calendar days after delivery, of the Non-conformity of the Goods or part of the Goods. Fokker is entitled to determine whether the Supplier must replace the Goods or remedy the Non-conformity within a period to be stipulated by Fokker. If replacement or remedy does not occur within this period, Fokker is entitled, at Fokker's discretion and without Fokker being liable for any compensation, to

- terminate the Order in writing, and/or,
- remedy the Non-conformity or have the Non-conformity remedied at the Supplier's expense, and/or if applicable,
- have the Goods certified retrospectively at the expense of the Supplier.

These rights are without prejudice to any rights that Fokker may have under the Order (including but not limited to the rights stipulated in articles 11, 12 and 14 of these General Terms and Conditions of Purchase) and/or at law.

If Fokker does not send a notice of Non-conformity within the 60 calendar days period stipulated above, the Goods may be deemed to have been accepted. Signing a confirmation of receipt shall not constitute acceptance of the Goods.

Title to the Goods shall pass to Fokker upon delivery as defined in Article 9 hereof, or, in case a payment is made by Fokker prior to delivery, upon receipt of such payment by Supplier. The Goods shall be delivered free from liens, charges, encumbrances or attachments. The risk in the Goods shall pass in accordance with the applicable Incoterms. Notwithstanding this, in case of loss or damage to the Goods due to the non-fulfillment by the Supplier of the packaging requirements or any other of Supplier's obligations or to its negligence, the Supplier shall be fully responsible for the damages caused to and/or costs incurred by Fokker.

## 11. Warranty

The Supplier warrants that the Goods:

- shall be complete, in good order, new, and free from defects in design, workmanship and material; and
- shall meet, in all aspects, the requirements and specifications stipulated and referred to in the Order including any changes and/or additions thereto; and
- shall conform to all applicable laws and regulations, including but not limited to environmental and safety regulations and those of civil aviation authorities and/or military supervisors; and
- shall not infringe on patents or other intellectual and industrial property rights or other rights of third parties.

## 12. Warranty content / term

If within 36 months after acceptance of the Goods by Fokker – in the event of infringement or alleged infringement of patents or other intellectual and industrial property rights or other rights of third parties: at any time – Fokker determines that the Goods no longer meet one or more of the warranties as stipulated in article 11 ('Defect'), Fokker will notify the Supplier of this in writing and the Supplier shall, without further costs to Fokker, immediately replace or repair the Goods or acquire a transferable right of use for Fokker and Fokker's Customers or otherwise remedy the Defect, at Fokker's discretion. If the Supplier fails to comply with this obligation Fokker has the right, without a requirement for further notice of default, to remedy the Defect at the expense of the Supplier. If 3 or more similar Defects occur in comparable Goods, Fokker has the right to demand free of charge replacement or repair or remedy as stipulated previously in this article, of Goods that have already been delivered or are still to be delivered, even if the Defect has not yet occurred in those Goods.

The Supplier is liable for all costs and damages incurred by Fokker and its Customer resulting from a Defect such as but not limited to installation, removal, (dis)assembly, testing, transport costs. At the discretion of Fokker these costs and damages may be deducted from any amount due and payable by Fokker to the Supplier or invoiced separately by Fokker to the Supplier. Neither this article 12 nor any other article in these Terms and Conditions of Purchase excludes or limits the Supplier's liability at law.

## 13. Confidentiality

The Supplier undertakes to maintain the confidentiality of all information and know-how supplied by Fokker and shall use this information and know-how exclusively for the execution of the Order.

## 14. Contractual Liability

The Supplier shall be liable to Fokker for the timely and proper performance of its obligations under the Order. The Supplier shall be liable for all costs, losses, damages and liabilities, including but not limited to costs and expenses incidental thereto such as legal fees, which may be incurred by or claimed from Fokker as a consequence of the failure by the Supplier to comply with its obligations.

## 15. Non contractual liability and indemnity

The Supplier shall be solely liable at law and shall indemnify and hold Fokker, its officers, directors, employees or insurers harmless from and against any and all claims, losses, liabilities, suits, judgments, expenses and costs (including attorney fees) or the like in any way connected with the death of or injury to any third party (whomsoever, or loss of or damages to any property of any third party when arising out of, or having its origin in the acts or omissions of Supplier in connection with the performance of the Order.

## 16. Insurance

The Supplier shall take out and maintain insurance, at Supplier's cost, to sufficiently cover Supplier's risks and liabilities in connection with the Order. At the request of Fokker Supplier shall provide evidence thereof. The requirement of insurance shall in no way affect Supplier's liability hereunder.

## 17. Fokker supplied items (FSI) and Tooling

All items such as raw material, parts, equipment, drawings, models, matrices, moulds, dies and specific tools required for the execution of the Order that are made available by Fokker ("FSI"), shall remain the property of Fokker.

All auxiliary items such as drawings, models, matrices, moulds, dies and specific tools that have been manufactured or purchased by the Supplier for the execution of Orders ("Tooling") shall immediately upon manufacture or purchase thereof become the property of Fokker.

As long as the Supplier has such FSI and/or Tooling under his custody or control, the Supplier shall be responsible for the cost of maintenance, storage and for the risk of damage to and/or loss of such FSI and Tooling. The Supplier shall ensure that FSI and Tooling is marked in such a way that Fokker will be able to exercise its proprietary rights at all times and the Supplier shall offer Fokker all the required assistance to do so, including the granting of access. If a third party threatens to take possession of FSI and/or Tooling, the Supplier shall immediately notify Fokker thereof.

## 18. Termination

Fokker shall have the right at all times to unilaterally terminate an Order by means of written notification, which may include a term, to the Supplier. If Fokker terminates the Order for convenience Fokker will reimburse, subject to article 8, the Supplier for the direct, reasonable and irreversible costs the Supplier can prove he has incurred in the proper execution of the Order, insofar as these costs have not yet been reimbursed by Fokker by means of previous payments to the Supplier including but not limited to costs of Tooling as per article 17 hereof, after acceptance of these costs by Fokker and upon receipt of a correct invoice. The Supplier must forward such a claim for costs, substantiated with supporting documentation, within 1 month after the termination date specified in the written notification. Failure to do so shall result in forfeiture of any right to compensation.

Without prejudice to Fokker's other rights under the Order and at law, including but not limited to the right to claim compensation for Fokker's costs, losses and damages, Fokker has the right at any time to terminate an Order in writing, without a requirement for notice of default or judicial intervention if the Supplier does not fulfil one or more of his contractual obligations or if such may be anticipated, is declared bankrupt, applies for suspension of payments or voluntary liquidation or if a third party submits such an application or if a situation arises which, in Fokker's opinion, may lead to suspension of payments or (in)voluntary liquidation, without Fokker being responsible for any costs or damages of Supplier that are or may be the result of such termination.

## 19. Assignment

Fokker is entitled to transfer or assign any of its rights and obligations under an Order at any time and without requiring the Supplier's consent.

## 20. Law / court

The Order and all agreements arising there from or connected therewith shall exclusively be governed by the laws of The Netherlands without its conflict of law principles. The stipulations of the Vienna Sales Convention of 11 April 1980 (CISG) (Bulletin of Treaties 1981, 84 and 1986, 61) are excluded.

The Parties agree to submit in first instance any dispute that may result from an Order or any agreement arising there from or connected therewith to mediation in accordance with the ACB Mediation Regulations. If the dispute can not be settled through mediation, either party shall be entitled to submit the dispute to the competent Civil Court in Breda. This method of dispute settlement does not affect the right of either Party at any time from seeking any interim, injunctive or interlocutory relief in a court of competent jurisdiction.