

General Terms and Conditions



of NAYAK Aircraft Service GmbH & Co. KG (hereinafter referred to as "NAS") for the performance of work on aircraft and equipment components.

I. General Conditions

1. Agreements between the Orderer and NAS shall be binding upon all parties only if the Orderer issues a written order to NAS specifying the scope of the order or if NAS confirms the order in writing. Orders transmitted by telephone or otherwise shall become binding only once confirmed in writing by NAS.

2. The order comprises the authority without special permission from the Orderer to make reductions of the landing speed, to test instruments or to carry out other work necessary to check the object of the order. The Orderer agrees that additional work which turns out during the repair to be necessary for flight safety may be carried out and separately invoiced only with special permission.

3. Cost estimates shall be binding only if made in writing and expressly referred to as binding in the written text. The work done for the purpose of preparing a cost estimate (e.g. disassembly) shall be invoiced to the Orderer even if the work envisaged in the cost estimate is not performed or is performed in a changed form.

4. NAS has the right to have the work comprised by the order carried out by any other undertaking which appears to it to be suitable, without any notification of the Orderer being required for this.

II. Delivery

1. Delivery dates shall be binding upon NAS only if they are referred to expressly and in writing by NAS itself as having been agreed. If additional work within the meaning of I. 2. becomes necessary, the delivery times shall be extended accordingly. Except for all cases of proven fault (wilful intent or gross negligence), the cancellation of the agreement and all damage claims because of failure to meet a deadline shall be excluded.

2. NAS shall not be responsible for late delivery or performance due to force majeure or to events which render performance far more difficult or impossible for NAS (especially war or exceptional circumstances, civil unrest, strike, lock-out, governmental action, shortage of raw materials and illness, also affecting the suppliers of NAS), also in the case of a binding agreement on a time period or deadline. NAS shall in such cases have the right to postpone the delivery or work by the duration of the obstruction, plus a reasonable start-up period, or to partly or entirely cancel the agreement. The same shall apply in case suppliers of NAS are responsible for the late delivery or performance, provided NAS makes reasonable efforts to deliver or perform promptly.

3. In cases where NAS exercises its cancellation right for the reasons mentioned above, NAS shall be obliged only to repay any down payments made, all other claims being excluded.

III. Acceptance

1. Acceptance shall in principle be affected by handover and takeover on the yard of NAS or of the workshop named by it.

2. If the Orderer wishes the object of the order to be delivered, this shall be done at its expense and risk. Delivery shall be deemed to have been effected, and thus the agreement to have been performed, upon shipment or, as the case may be, loading at the works, especially in cases where the customer gave instructions to deliver the goods directly to a third party.

3. If the object of the order is an aircraft, the usual parking or storage fees will be charged already from the time of completion of production if the Orderer does not collect the aircraft within 4 days of the dispatch by NAS of the notification of completion to him.

4. If the Orderer is in delay in taking delivery, the liability of NAS for damage of any kind caused by its own negligence or by the negligence of its staff shall be excluded.

IV. Warranty Claims

1. NAS shall fulfill justified warranty claims for all products and services up to a duration of one year from the date of delivery or, as the case may be, acceptance. All warranty claims shall be time-barred thereafter. If the customer of NAS is a fully qualified merchant, and if the defect is a fault in material which a sub-supplier of NAS is responsible for, NAS hereby already assigns warranty claims against the sub-supplier in advance. Warranty claims against NAS in this respect shall be excluded.

2. Apparent defects must be reported to NAS by the customer in writing within 14 days. Parts which are complained of must be sent to NAS cost-free for an inspection. This obligation shall also apply in the case of a hidden defect if the customer of NAS is a fully qualified merchant. If the report is not made in writing or not within the deadline, NAS shall be released from any and all obligations to fulfil warranty claims.

3. If the customer of NAS is a fully qualified merchant, the obligation of NAS to fulfil warranty claims shall in any case end after the expiry of 4 weeks or 25 flying hours.

4. The obligation to fulfil warranty claims shall also end if the parts of the object of the order affected by the defect were changed by the Orderer or by a third party or only repaired in a makeshift manner by them. The costs incurred by NAS due to unjustified warranty claims shall be borne by the customer.

5. The obligation of NAS to fulfil warranty claims shall in all cases be limited to the obligation to remedy the defect in its own works or through an undertaking commissioned by NAS. If the remedial work or substitute delivery within a reasonable period fails, the Orderer shall have the right to cancel the agreement or to reduce the price.

6. Without regard to any complaints, the claims of NAS shall be due and payable in accordance with the agreed terms of payment. The customer must assert the rights based on alleged defects separately, any set-off or exercise of a right of retention in view of a complaint of defects of any kind is expressly excluded with the exception of undisputed claims or claims awarded by final and non-appealable judgement.

V. Liability

1. NAS shall not be liable for any damage to or loss of things handed over to NAS for work, or of parts thereof, unless the damage is caused grossly negligently or intentionally by NAS or its staff or arises even from the slightly negligent breach of an essential contractual obligation.

2. Unless otherwise provided for in these conditions, the liability of NAS for any damage to the object of the order or to parts thereof shall be limited to making repairs. If it is established by NAS that repairs are not possible or involve disproportionately high costs, the liability of NAS shall be limited to compensation for the value of the object of the order or, as the case may be, of the damaged parts on the day of the occurrence of the damage.

3. The customer undertakes to remove all things from aircraft to be worked on by NAS which are not necessary for the operation of the aircraft. NAS assumes no liability for the loss of or damage to things which remain in the aircraft contrary to this obligation. This shall not apply if an agreement to safekeep such things was expressly concluded with NAS.

4. If NAS entirely or only partly passes on an order placed with it to another company, Clause V 1. shall apply analogously. The other undertaking shall then be treated like staff.

5. As for the rest, NAS will not by passing on orders or parts thereof to a third company grant the Orderer or a third party compensation for any indirect or direct damage, regardless of its legal basis.

6. The Orderer declares that it is prepared to release NAS from any liability to third parties and from any claims made against NAS by third parties, insofar as such claims arise through him or in connection with the order placed by him, unless NAS acts intentionally or with gross negligence.

7. The Orderer shall be liable to NAS for all damage culpably caused by him or his representatives.

VI. Payment

1. Unless otherwise agreed in writing, payment for work shall be due upon acceptance of the object of the order and must always be made cash without any deduction. NAS shall have the right from the due date for payment to demand interest of 5% above the applicable base interest rate, but at least 8%. This shall also apply in the event of default. In both cases, the Orderer shall remain free to prove that NAS has not incurred any interest loss or only a smaller interest loss.

If the customer of NAS is a fully qualified merchant, NAS has the right to demand interest of 8% above the applicable base interest rate, but at least 11%. As for the rest, the provisions in the first paragraph shall be applicable.

2. NAS has the right to demand advance payment in a reasonable amount for the expected costs.

3. Any objections against invoices must be made in writing and no later than within 8 days of receipt of the invoice. The date of the postal stamp shall count.

VII. Right of Retention and Chattel Mortgage

1. NAS shall in respect of the claim arising from the order have a right of retention and a contractual chattel mortgage relating to the things in the possession of NAS because of the order. Regarding the chattel mortgage, this shall not apply if the aircraft to be worked on is registered in the aircraft register for the Federal Republic of Germany or if the entry there has been deleted without any entry having yet been made in the chattel mortgage register. A chattel mortgage shall exist in these cases only if the chattel mortgage is shown in the register.

The right of retention and the contractual chattel mortgage can in all cases also be asserted in respect of claims arising from earlier maintenance work, spare part deliveries and other claims arising from the business relationship.

2. If NAS exercises its right to make a distress sale, the dispatch of written notification to the Orderer's address last known to NAS shall suffice for the warning that the sale will be made. Moreover, NAS shall have the right to freely sell the objects possessed by it on the basis of Clause I at any time and at any place which appears suitable to it, once or successively to satisfy its claims, without the need to obtain an enforceable document, to observe the provisions governing enforcement, or to observe a deadline. In particular, the provisions in sec. 1237 sentence 2 and 1238 BGB (German Civil Code) shall not be applicable. No prior warning is required.

3. The provisions in Clause 2 shall not apply insofar as aircraft to be registered in the aircraft register for the Federal Republic of Germany were worked on.

VIII. Retention of Title and Replaced Parts

NAS retains title to all accessories and spare parts and replacement aggregates until full payment is made for all claims arising from the business relationship. If title passes over from NAS through combining, mixing or processing, NAS shall become the co-owner of the thing which the things delivered by it were combined or mixed or into which they were processed, in the proportion of the respective values.

IX. Other Conditions

1. The agreed place of jurisdiction is Cologne.

2. The law of the Federal Republic of Germany shall be applicable.

3. The Orderer's claims under the agreement shall be neither transferable nor assignable unless they are undisputed claims or claims awarded by final and non-appealable judgement.

4. Agreements and obligations deviating from or supplementing the above conditions shall be effective only if agreed on in writing and signed by both parties.

5. If any of the above conditions are or become inapplicable or are waived, the validity of the remaining provisions shall not be affected thereby.