

**Terms and Conditions  
of members of the  
Austrian Airlines AG**

**for the purchase of  
goods and services**

hereinafter referred to as  
**PURCHASE TERMS**

(valid as of 1<sup>st</sup> of June 2017)

## **1. Scope of application and subject-matter**

- 1.1. These Terms and Conditions for the Purchase of Goods and Services (hereinafter referred to as "PURCHASE TERMS") shall apply to the solicitation of and supplementary to any contracts whatsoever concerning the purchase of goods and services for the Austrian Airlines Group, consisting of Austrian Airlines AG (hereinafter referred to as "Principal"). Also an order in the merchandise planning and control system (SAP) shall be deemed a contract as defined herein, provided that a contractor's offer is thereby accepted. Where applicable provisions are missing in these PURCHASE TERMS, the law shall apply on an exclusive basis. Contractor's varying terms and conditions shall be binding on the Principal only if the latter has specifically acknowledged these in writing, by fax or by electronic means.
- 1.2. Principal and Contractor agree that the supplies and services are purchased from Contractor not only for use in Principal's own company, but also, to the same extent and under the same conditions, for use by undertakings affiliated to Principal pursuant to § 189a Nr 8 UGB and by Deutsche Lufthansa AG, as Principal's parent company, and for use by undertakings affiliated to Deutsche Lufthansa AG pursuant to § 15 German Stock Corporation Act (AktG) as well as for use by SunExpress Güneş Ekspres Havacılık A.Ş and SunExpress Deutschland GmbH.
- 1.3. Should any term of these PURCHASE TERMS be inconsistent with any contract or framework agreement based thereon, the terms and conditions of that contract or agreement shall be authoritative.
- 1.4. Contractor specifically acknowledges the exclusive application of these Terms and Conditions with the signing of the contract or with acknowledging the receipt of Principal's SAP order corresponding to his quote (Section 3.1). If these PURCHASE TERMS are not expressly acknowledged, the contractor will acknowledge these with the execution of the order at the latest.
- 1.5. "Service" as used in these PURCHASE TERMS shall mean in any context whatsoever both the provision of services and the supply of goods.
- 1.6. These PURCHASE TERMS shall unrestrictedly apply to any change in deliveries or services, all additional deliveries or services, and all ordered services billed on the basis of effort spent (*Regieleistungen*).
- 1.7. These PURCHASE TERMS are binding for the entire present and future business between Principal and the contractor, even if these are not expressly incorporated by reference, for example in connection with orders placed orally or by phone.

## **2. Quote and contract formation**

- 2.1. The (future) contractor will submit to the (future) Principal a quote duly signed by authorized signatory(ies) for the deliveries and/or services to be provided. This quote shall be consistent with the (future) Principal's inquiry and shall be non-binding and free of charge for the latter.
- 2.2. Unless otherwise agreed, the contractor shall be bound by its quote for one month.
- 2.3. Unless a contract to be signed by the (future) contracting parties is made, the contractual relationship shall come into existence with the receipt by the contractor of Principal's SAP order.
- 2.4. The contractor shall not be entitled to claim payment for any deliveries or services not agreed in the contract or order.

### **3. Order confirmation**

- 3.1. The contractor shall confirm the receipt of any SAP order in writing.
- 3.2. Should the Principal realize that the contractor commences the execution of the order without having confirmed its receipt in writing, the contractor shall be deemed to have unconditionally accepted the order along with these PURCHASE TERMS.
- 3.3. Should the contractor's confirmation be in variance of the Principal's order, it shall highlight these variances in a conspicuous manner, and an effective *assensio mentium* shall require Principal's written acknowledgement of these variances.

### **4. Government permits**

- 4.1. The contractor shall procure at its own initiative and cost and expense that all government permits or third-party approvals which are necessary to carry out his work are available. The contractor shall hold harmless and indemnify the Principal should claims be asserted against the Principal by any party whatsoever due to the lack of or the incorrectness of permits or approvals, or should it incur any damage whatsoever.
- 4.2. The contractor shall procure compliance with the Austrian Act on the Employment of Foreign Nationals and shall particularly hold harmless and indemnify the Principal in this respect should the contractor use employees other than Austrian nationals.

### **5. Compensation and included services**

- 5.1. The compensation for a delivery and/or service shall be determined in the order or in a separate contract between Principal and the contractor.
- 5.2. Unless otherwise agreed, prices shall be firm prices.
- 5.3. Unless otherwise agreed, all prices are net prices denominated in euros, exclusive of statutory VAT and, if applicable, exclusive of stamp duties and other state duties. These duties shall fully be stated separately and be borne by the contractor, unless otherwise agreed.
- 5.4. The agreed prices shall cover all services and ancillary services provided by the contractor. The prices include everything which the contractor is required to do in performance of his obligation to provide the services at the agreed place. Any compensation not specifically determined by contract shall be excluded.
- 5.5. Additional deliveries or services not agreed in the original contract may be charged only if these are based on a separate written agreement. This agreement shall define in any event the scope of additional deliveries or services. Also the invoice shall contain a separate reference to that additional order.
- 5.6. Additional expenses which are necessary to comply with the contractually agreed delivery or service periods and/or dates, including but not limited to overtime pay, multi-shift operation expenses or costs triggered by external circumstances will not be reimbursed separately.
- 5.7. Any case of any variance between the agreed prices on the one hand and price itemizations, if any, on the other hand (arithmetic errors), the agreed prices shall apply. If, in contracts that provide for unit prices, the items price is inconsistent with the result of quantity and unit price, the stated quantity and the agreed unit price shall be relevant.

- 5.8. Prices may not be increased because the order contains arithmetic and typographical errors or due to an execution of the order contrary to the terms of an agreement.
- 5.9. Unless otherwise agreed, commuting expenses and travel expenses shall be reimbursed by Principal as follows, if an employee or agent of the contractor temporarily leaves his or her duty station on Principal's request. Any change of location within Vienna or within a radius of 25km will not be reimbursed, and travel expenses actually incurred will be reimbursed. If different means of transport are available, the least expense means, taking advantage of all tariff reductions, shall be used. Travel by rail shall generally take place in coach class. Plane tickets will generally be provided by Principal, and employees are required to travel in Economy Class. Upgrading to Business Class is possible on Principal's long-distance flights, depending on available seats and the upgrading policies. Business class travel on long-distance flights of other airlines is subject to the relevant policies of that airline. If no means of mass transportation are available or reasonable, a person may take a taxi.

Should a person use his or her own car, he or she is not entitled to kilometre allowance, but only to reimbursement of a ticket for public transportation, unless he or she has used his or her own car with Principal's express consent. In this event, the official kilometres allowance at the time of travel will be paid.

Should an overnight stay be necessary, Principal will reimburse reasonable hotel costs. A person shall preferably stay at Principal's contract hotels and coordinate his or her stay with Principal. Additional expenses for meals and other expenses will not be reimbursed.

All expenses must be documented by the relevant receipts, and these receipts shall be delivered to Principal on request. If the contractor has travelled on business also in the interest of another contracting party, travel expenses shall be distributed accordingly among the contractor's contracting parties.

## **6. Delivery and service - execution**

- 6.1. The contractor shall promptly have reviewed the execution documents made available by Principal and shall communicate to Principal immediately, in any event within two weeks, any defects and concerns it may have, having applied proper care and diligence, with respect to the proposed form of execution, such notice to be given in writing, electronically or via fax.
- 6.2. Execution documents originating from the contractor or from third parties may not be used prior to release thereof by Principal. Such release shall not release the contractor from its review and warning obligations.
- 6.3. Should the contractor have concerns about the lawfulness, correctness or usefulness of Principal's instructions, about the ordering of materials or any other items or about the services of other contractors, or
- should the contractor become aware of any circumstances which may be contrary to performance in accordance with the terms of the contract, or
  - should the contractor have any complaints as to the fitness of materials, tools or other ancillary material contributed by the contractor or provided by Principal, after having reviewed these
  - the contractor shall communicate its concerns to Principal immediately, in any event within two weeks by giving notice in writing, via fax or electronically, suggesting a suitable remedy. Unless Principal responds to the contractor's notice within 14 days, the contractor shall be required to proceed in accordance with the order.

## **7. Service provision principles**

- 7.1. All deliveries and services shall be provided carefully in accordance with the state of the art.
- 7.2. The contractor will use all available means to carry out the tasks assigned in a satisfactory and timely manner. The goods shall be delivered in appropriate and error-free packaging customary in trade. The size of packaging shall be in accordance with DIN EN 13698-1 („europallet“) and the maximum height shall not exceed 2 meters, unless a deviation is necessary due to the size of goods. Packaging shall be returned at the contractor's risk and expense.
- 7.3. If orders consist of several units, the contractor may not carry out partial deliveries or provide parties services and issue partial invoices, except with Principal's prior written consent.
- 7.4. Prior to commencing deliveries or providing services, the contractor will nominate a coordinator as a permanent contact person at the Principal's disposal who will procure the information which necessary for the contractor to make the deliveries and provide the services and who will bring about the necessary decisions at the contractor's.
- 7.5. The making of deliveries or the provision of services will not create an employment relationship between the parties.
- 7.6. Principal will promptly communicate to the contractor any legitimate doubts it may have as to the qualification, fitness or motivation of any employee or agent used by the contractor in the course of the project. The contractor will promptly take the necessary measures to eliminate the mentioned nuisances or to replace that employee by a qualified, suitable and motivated employee of the contractor on request. Should an employee of the contractor be incapacitated, Principal shall have the right to request that this employee be replaced by a qualified, suitable, and motivated employee of the contractor.
- 7.7. Principal will nominate an agent and/or person for the contractor to contact in connection with the relevant contract and the services to be provided within the scope thereof respectively.

## **8. Compliance; Environmental and Social Standards**

- 8.1. Contractor represents, warrants and undertakes, as appropriate, that
  - the contract with Principal and the relationship created thereby and Contractor's activities thereunder do not and will not violate any laws related to bribery and/or corruption, including but not limited to the OECD convention on combating bribery of foreign public officials in international business transactions and all related and implementing legislation or put Principal in breach of any such laws;
  - in connection with the provision of the services or any of them, Contractor will duly observe at all times throughout the period of the respective contract all applicable laws and the terms of the contract;
  - neither Contractor nor, to Contractor's knowledge, any other person, including but not limited to Contractor's employees, subcontractors or agents, have made any loan, gift, donation or other payment of anything of value, directly or indirectly, whether in cash or in kind, to or for the benefit of any public official or any other person to obtain any improper advantage or will make such offers in the future. The aforementioned term of a public official includes officer or employee of a government agency, department, instrumentality, government-owned company, or public international organization, political candidate, political party or official thereof, or anyone acting in an official capacity for any of the foregoing.

- 8.2. Principal, as 'socially responsible' undertaking, shall comply with the internationally recognised environmental standards and the basic work standards of the International Labour Organization, as defined by Article 2 of the ILO Declaration of 18 June 1998 („Declaration on fundamental principles and rights at work“), and also expects its contractors to do so.
- 8.3. Without prejudice to any other rights Principal may have, Principal shall be entitled to terminate without previous notice fully or partially the contract with Contractor and any attachment as well as any other contractual relationship the parties may have, if Principal gains knowledge or has reason to suspect that Contractor is in breach of his obligations according to this article.
- 8.4. Principal may conduct an anti-corruption audit of the Contractor's books and records if necessary and appropriate to ensure the Contractor complies with its obligations under this article.

## **9. Shipment of goods**

- 9.1. Shipment shall take place DDP to a delivery place indicated by Principal; any variation shall require Principal's written consent.
- 9.2. The shipment shall be accompanied by a packing list or delivery note. Principal's PO number shall always be stated on these documents.
- 9.3. Any damage and costs resulting from non-compliance with these shipping regulations, for example, extra freight, return shipment, customs duties, demurrage etc. shall be borne by the contractor.
- 9.4. Transport insurance shall be payable by Principal only if Principal and the contractor have expressly so agreed in writing.

## **10. Acceptance of deliveries and services**

- 10.1. Principal shall accept deliveries and services without exception under the condition that the quality and quantity of the services and deliveries is as contractually agreed. Registered c.o.d. consignments will not be accepted.

## **11. Subcontractor services**

- 11.1. The contractor may not subcontract the entire order.
- 11.2. The contractor shall carry out the contractual service under its own responsibility. The contractor shall procure and shall be responsible to Principal that subcontractors, if any, comply with all regulations imposed upon the contractor itself, including but not limited to those described in Section 20. of these PURCHASE TERMS.
- 11.3. The contractor shall be required to carry out itself material parts of that work which falls under its authority. Parts of services may be subcontracted only if the subcontractor has the authority, technical capability and knowledge which is necessary to carry out its part of the order. The contractor shall notify Principal in case he should subcontract parts of a delivery or service, stating the company name, address and responsible contact person of that sub-contractor. These services shall be invoiced in any event by the contractor.

## **12. Contractor's duty to provide information and Principal's duty to participate**

- 12.1. The contractor shall endeavour to understand all details of the order and of the contemplated work under its own responsibility. It shall obtain all documents and any information from Principal which may be necessary for execution, and Principal shall timely make available these documents and information upon request.
- 12.2. Any errors resulting from non-compliance with these duties shall be at the contractor's cost and expense.
- 12.3. If any work is carried out at Principal's premises, the safety and accident-prevention policies and rules of order applicable at these premises shall be complied with.

## **13. Target dates**

- 13.1. The contractor shall be required to prove service progress on Principal's request. The parties shall consensually determine necessary interim target dates and any changes in the timetable, if any. The contractor shall provide its own services or deliveries in consideration of third-party services to ensure that no postponement of planning and execution dates occurs.
- 13.2. Deliveries or services may be made prior to the agreed delivery date only with Principal's consent and provided that Principal does not suffer any disadvantage as a result. Particularly the payment term shall not start to run prior to the agreed delivery or service date.
- 13.3. Strict compliance with the contractually agreed time limits and/or target dates shall be necessary even if obstacles (such as labour shortages, disputes between the parties or the like) should occur. A time limit may reasonably be extended, in any event until the relevant obstacles has ceased to exist, only in the event of force majeure or if circumstances within the Principal's control occur, the occurrence of which shall immediately be notified to the Principal.

## **14. Change in the scope of deliveries and services**

- 14.1. Principal may change type and scope of agreed deliveries and services or the circumstances in connection with the provision of deliveries or services or request that additional deliveries of services be provided, which services are not contemplated in the contract by their nature but are necessary for the performance of the contract, provided that such changes or additional deliveries and services can reasonably be expected from the contractor; in this event, there will be no change in contractually agreed prices.
- 14.2. Provided that there is no significant change in the scope of deliveries or services and no significant change in the market conditions, any changes in and modifications of the agreed deliveries or services shall be executed at Principal's request at the same terms and conditions and on the basis of the same prices. If these additional orders or any other changes allow a price reduction, Principal shall be entitled to assert that price reduction. In these events, the performance period shall be reagreed.
- 14.3. If any change in deliveries or services ordered by Principal affects the contractually agreed price, the contractor shall notify the resulting change of the originally agreed contractual price to Principal immediately, in any event prior to the provision of these additional deliveries or services, by giving written, electronic or fax notice. Only after the Principal has approved the additional compensation resulting from a change in the deliveries or services in writing may the contractor provide and subsequently charge that additional delivery or service. If the contractor has not notified the additional compensation in writing, electronically or via fax and if Principal has not approved the excess and the amount of the additional

compensation, the contractor shall lose any entitlement to a compensation for the additionally provided deliveries or services.

- 14.4. If any change in deliveries or services ordered by Principal affects the contractually agreed target dates, contents or any other relevant circumstances, the contractor shall notify the resulting changes to Principal immediately, in any event prior to the provision of these additional deliveries or services, by giving written, electronic or fax notice. Only after the Principal has approved the change in the deliveries and services in writing may the contractor provide and subsequently charge that additional delivery or service.
- 14.5. If certain partial deliveries or services are cancelled on Principal's instruction, the agreed compensation payable for these cancelled deliveries or services shall not be payable either. If a portion of an agreed delivery or services is cancelled or if quantities are reduced, further claims for compensation of disadvantages or the assertion of damages shall be excluded.

## 15. Termination of continuing obligations

- 15.1. Ordinary termination: Unless otherwise agreed, continuing obligations may be terminated by either party with three months' written notice (registered mail) at the end of a calendar month; this time limit shall be deemed to be complied with if the notice was sent on the last day of the time limit.

Extraordinary termination: A contract may be terminated by either party without notice in writing for good cause as follows:

- a) if bankruptcy proceeding were initiated with respect to the contractor's assets or a petition for bankruptcy was refused on the grounds of sufficient assets to cover costs;
  - b) if the contractor's business is liquidated;
  - c) if the contractor or its authorised shareholders or lawful officers or any of them are no longer capable of independently disposing of its or their assets, have been deprived of their trade license or have been finally convicted by a criminal court for serious acts or omissions in connection with its or their professional activities;
  - d) either party is in breach of material contractual obligations or responsible for severe organisational irregularities and fails to remedy that situation within 30 days;
  - e) if other circumstances occur, the occurrence or continuation of which frustrate or considerably prejudice the purpose of the cooperation or would mean an unreasonable hardship for the terminating party.
- 15.2. Good cause which entitles Principal to give extraordinary termination without notice in writing shall particularly be deemed to exist:
- a) if the contractor subcontracts the order to third parties without the Principal's consent;
  - b) if the contractor has misled Principal or third parties in connection with the placing of the order or the management of the contract;
  - c) the contractor fails to comply with the terms and conditions of the Austrian Employment of Foreign Nationals Act (*Ausländerbeschäftigungsgesetz*);
  - d) the contractor grossly breaches employee protection legislation or insistently fails to pay public duties or social security contributions;
  - e) the contractor fails to make available the documents necessary to determine the compensation despite the Principal's request.

- 15.3. Should Principal terminate the contract for reasons attributable to the contractor's control, the contractor shall be entitled to only a prorated compensation. If the contractor is liable for a fault, it shall grant full satisfaction to Principal (Section 1323 of the Austrian Civil Code). The contractor shall hold harmless and

indemnify Principal should third parties assert any claims against Principal due to cancellation of the contract attributable to its fault.

## **16. Cancellation of contracts for works and services**

16.1. Principal may rescind all or any part of agreed contracts for works and services (*Zielschuldverhältnisse*) at any time. In this event, the contractor is only entitled to the compensation attributable to the work already provided and to that work already being provided when the contract is rescinded, including any material used or already purchased; the contractor shall not be entitled to assert any further claims.

16.2. However, if Principal rescinds the contract in whole or in part for reasons within the contractor's control, the contractor shall be entitled to no compensation in the first case, and to only a prorated compensation in the second case. If the contractor is liable for a fault, it shall grant full satisfaction to Principal (Section 1323 of the Austrian Civil Code). The contractor shall hold harmless and indemnify Principal should third parties assert any claims against Principal due to cancellation of the contract attributable to its fault.

Good cause which entitles both parties to rescind the contract without notice shall particularly be deemed to exist:

- a) if bankruptcy proceeding were initiated with respect to the contractor's assets or a petition for bankruptcy was refused on the grounds of sufficient assets to cover costs;
- b) if the contractor's business is liquidated;
- c) if the contractor or its authorised shareholders or lawful officers or any of them are no longer capable of independently disposing of its or their assets, have been deprived of their trade license or have been finally convicted by a criminal court for serious acts or omissions in connection with its or their professional activities;
- d) either party is in breach of material contractual obligations or responsible for severe organisational irregularities and fails to remedy that situation within 30 days;
- e) if other circumstances occur, the occurrence or continuation of which frustrate or considerably prejudice the purpose of the cooperation or would mean an unreasonable hardship for the terminating party.

16.3. Good cause which entitles Principal to terminate the contract without notice shall be deemed to exist if:

- a) if the contractor subcontracts the order to third parties without the Principal's consent;
- b) if the contractor has misled Principal or third parties in connection with the placing of the order or the management of the contract;
- c) the contractor fails to comply with the terms and conditions of the Austrian Employment of Foreign Nationals Act (*Ausländerbeschäftigungsgesetz*);
- d) the contractor grossly breaches employee protection legislation or insistently fails to pay public duties or social security contributions;
- e) the contractor fails to make available the documents necessary to determine the compensation despite the Principal's request.

## **17. Warranty, guarantee**

17.1. The contractor fully warrants for compliance with applicable general and special standards and with accepted rules and the state of the art, as well as for compliance with all statutory and other provisions relevant in connection with the provision of the services. The contractor shall be obliged to exercise due care and provide explanations in this context. The contractor expressly warrants to Principal that all deliveries or services are free and clear of defects during the warranty period.

- 17.2. The warranty period shall always be two years from acceptance by Principal, unless the contractor offers a longer warranty period, in which case that extended warranty period shall apply. If partial services are delivered, the warranty period shall start to run not until acceptance of the last partial delivery. In case of replacement deliveries or services and rectification of severe defects, the warranty period for the affected parts will start to run again.
- 17.3. Principal may at its election request either rectification, exchange of an item, a price reduction or - except in case of minor defects - rescission from the contract. Should it request rectification, the contractor shall be required to rectify defects immediately at its own cost and expense during the warranty period. On Principal's request, the contractor shall exchange defective parts of a delivery or service against non-defective parts at its own cost and expense. In cases of urgency, Principal may rectify itself or procure that third parties rectify defects after notification of the contractor and at the latter's cost and expense, yet without granting a grace period, without affecting Principal's claims as a result of these defects; in case of imminent danger, Principal itself may so act without giving notice to the contractor. If a grace period applies or shall be granted, a one-month period shall be deemed reasonable, unless otherwise agreed.
- 17.4. The fact that Principal has reserved the right to supervise the execution of the order or may have made available or released execution documents shall not affect the contractor's warranty obligation.
- 17.5. The costs which Principal incurs in connection with the supervision of experts entrusted with rectifying defects shall be borne by the contractor.
- 17.6. In all other respects, the statutory warranty provisions shall apply. However, the contractor waives its right to plead failure to give or a delay in a notice of defect. Principal shall not be required to inspect the delivery or service and to notify defects, if any.

## **18. Penalty**

- 18.1. In case of late delivery or service provision, Principal may charge a penalty equal to 0.5% of the agreed total order price, but not more than 30% thereof, for each day of delay, commencing from the 4<sup>th</sup> day after the determined delivery or service date. This shall not affect further rights derived by law. This applies, unless another penalty was agreed.
- 18.2. This penalty will be reduced on a prorata basis if Principal is also at fault to an extent which is not only insignificant.
- 18.3. It is expressly agreed that this penalty may not be reduced by court order.

## **19. Damages and limitation of liability**

- 19.1. Principal shall generally be entitled to damages and recourse claims without any restriction. In derogation of Section 933a of the Austrian Civil Code, Principal shall decide at its sole discretion whether it will assert warranty claims or request compensation in money's kind for a defect. During the entire limitation period, the contractor shall have to prove that it is not liable for any loss whatsoever.
- 19.2. The contractor shall be liable for damage caused by slight negligence, unless he has breached an obligation, the fulfilment of which is of particular significance for achieving the purpose of the contract ("Cardinal Obligation"), only up to the amount of the agreed total order price (in case of continuing obligations involving continuous compensations, up to three times the annual payment).

## **20. Confidentiality, data privacy, data superiority and PCI DSS**

- 20.1. Principal shall have the exclusive right to dispose of any data and information created for Principal (data superiority).
- 20.2. The contractor undertakes to use any data and processing results only within the scope of Principal's orders, to return these exclusively to Principal, and to deliver these to third parties only with Principal's written consent. Similarly, any use of data made available for the contractor's own purposes shall require Principal's written consent.
- 20.3. The contractor undertakes and will procure that any persons working for it will keep confidential any data and business secrets which the contractor or these persons may have become aware of in connection with the completion and management of the contractual relationships underlying these PURCHASE TERMS. It may use only persons for the performance of its contractual obligations, responsibilities and other tasks who have demonstrably and specifically been committed to keep those data and business secrets confidential prior to commencing their activities. Press notes and other notices in connection with the order may be disclosed only with Principal's consent.
- 20.4. The contractor and the persons referred to in Section 20.3 respectively shall keep confidential and - unless necessary to achieve the purpose of the contract - shall neither record, nor distribute or realize any personal data and information received from Principal which is referred to as "confidential" "internal" or the like or which other circumstances otherwise denote as trade or business secrets; this confidentiality obligation applies for an indefinite period of time (also after termination of the contractual relationship). Confidential information shall also include any data entered in or saved on computer systems and technical, operational, and commercial information.
- 20.5. The contractor shall enter into appropriate contractual understandings to ensure that any employees and agents acting on its behalf will not realize, disseminate or record without authorisation the information referred to in Section 19.4 of these PURCHASE TERMS for an indefinite period of time and also after termination of their activities and/or contractual relationship with the contractor.
- 20.6. The following shall apply to the processing of credit card information: Credit card information shall be processed and transmitted exclusively via a PCI DSS (Payment Card Industry Data Security Standard) certified system. A copy of the document proving compliance with PCI DSS shall be submitted to Principal on a yearly basis.
- 20.7. This confidentiality obligation shall not cover information that
  - is already public domain, has already been known to the parties or was later on published by the disclosing party,
  - was independently developed by a party without being aware of or having used similar information of the other party,
  - was disclosed by a third party who is an authorised holder thereof and is not subject to any confidentiality obligation, or
  - must be disclosed by virtue of legislation or government orders; provided, however, that the facts were notified in writing to the other party prior to disclosure.
- 20.8. Data controller (data exporter) and data processor (data importer) agree to conclude a written contract about data processing ("Data Processing Agreement") under the scope of the Austrian Data Protection Law in its applicable version, if personal data are processed. The following content must be specified in the solicited Data Processing Agreement:

- content and scope of the data processing,
- appropriate technical and organizational data security measures, particularly the confidentiality obligations of employees,
- involvement of additional data processors or sub-contractors,
- technical and organizational support to fulfill data subjects' rights (such as the right of access, right to rectification and erasure, the right to restriction of processing and the right to data portability),
- the procedure after termination of the Data Processing Agreement, whether the processed data, documents and processing results need to be handed over to the data controller, must be kept further on its behalf or destroyed.

20.9. Principal's obligation of confidentiality to the undertakings affiliated to it pursuant to § 189a Nr 8 UGB, to Deutsche Lufthansa AG, as parent company, and to the undertakings affiliated to it pursuant to § 15 German Stock Corporation Act (AktG) as well as to SunExpress Güneş Ekspres Havacılık A.Ş and SunExpress Deutschland GmbH is expressly excluded.

## **21. Loyalty**

- 21.1. The parties are required to be loyal to each other.
- 21.2. For the term of the contract and for twelve (12) months after termination of the contract, they will refrain from soliciting and employing, also through third parties, any employees of the other party who were engaged in the realization of the orders.
- 21.3. The party in breach of Section 20.2 shall be required to pay to the relevant other party liquidated damages in the amount of the relevant employee's current gross annual salary.

## **22. Property rights**

- 22.1. Principal acquires the exclusive right to use all documents prepared by the contractor in performance of the contract and any other work results created in this context.
- 22.2. The contractor shall hold harmless and indemnify Principal for any infringement of third-party property rights in connection with the provision of the contractual deliveries or services.
- 22.3. Principal may use and exploit any information, specifications, and the contractor's know-how received in connection with the contractual relationship without additional compensation.
- 22.4. The drawings, sketches, tools, supplies, patterns, models and the like Principal has made available to execute the order or has financed will remain or become Principal's property, may not be made available to third parties or used for other purposes, and may not be used for advertising purposes. These shall immediately be returned to Principal after the provision of the services or in case of any rescission from or cancellation of the contract. In addition, any confidential information and copies thereof which the contractor may have received in connection with the provision of its services shall immediately be returned to Principal or be destroyed after the provision of the services or upon rescission from or cancellation of the contract.

## **23. Invoicing, payment, and late payment**

- 23.1. Invoices (including attachments) shall be delivered to the Principal's e-mail address [invoices@austrian.com](mailto:invoices@austrian.com) immediately after the delivery or service was properly provided, stating the relevant contract, the purchase order number, and the service period, on the basis of performance records confirmed by Principal. Invoices for interim payments shall be marked accordingly and shall be delivered at the agreed point in time. No advance payments will be made. With the issuing of the invoice, the contractor waives its right to assert any further claims from the relevant contract; in addition, the contractor waives its right to avoid this declaration on the grounds of error. In addition, the final and partial invoices shall be accompanied by all documents necessary for verification.
- 23.2. If the invoice does not correspond to all requirements set out in these PURCHASE TERMS, the contract, the SAP purchase order, VAT legislation or any other applicable legislation, such invoice shall not be deemed to have been issued.
- 23.3. Unless otherwise agreed, the Principal will pay any invoices issued by the contractor within 60 days after receipt of the verifiable invoice free and clear of any deduction and charges. Principal may deduct a 3% cash discount for payments made within 14 days, and a 2% cash discount for payments made within 30 days. Partial invoices are subject to the payment terms fixed for the entire order by analogy.
- 23.4. On the Principal's request, the contractor will submit complete and precise records to prove its claims consistent with proper accounting principles.
- 23.5. Deliveries made and services provided prior to the agreed target date shall not affect the payment term related to that target date.
- 23.6. Principal may withhold payments due to incomplete delivery or services or incomplete warranty or guarantee claims.
- 23.7. Principal reserves the right in connection with the payment of the contractor's invoices to take advantage of any option permitted by law to set off its claims against counterclaims. The contractor may not set off its claims against Principal's claims.
- 23.8. In case of late payment, the contractor may charge default interest at a rate of two (2) percentage points above the base rate published by the Austrian National Bank.

## **24. Assignment of claims**

Claims against the Principal may be effectively assigned only with the latter's written consent.

## **25. Force majeure**

Both parties shall be released from their contractual obligations and shall not be deemed to be in breach of contract in case of force majeure, such as war, civil unrest, natural disasters or fire, sabotage, epidemics, quarantine, government action, unlawful strikes, lock-outs etc. Neither party can be made liable for any damage caused by force majeure. Should events of force majeure continue for more than three months, both parties may terminate this contract immediately by written notice.

## **26. Right of Review**

Implementation of the safety measures must be verifiable by appropriate means. For that purpose, Contractor shall keep records showing what safety-related measures are performed when, by whom and with what result.

All records shall be prepared in a 'tamper-proof' manner, i.e. they must be clear and understandable in particular for a competent third party.

With respect to the relevance of external reviews, for example by the auditor, Contractor shall offer archiving services to comply with statutory retention periods. This includes the provision of data, e.g. logging data, collected in connection with the provision of IT services, which serve a documentation function.

Principal's Group Audit Department shall be entitled to review Contractor's records.

## **27. Written form and severability**

27.1. Agreements, amendments, side agreements and covenants in variance of these PURCHASE TERMS and contracts based thereon shall be valid only if made by a written instrument that bears the Principal's authorised signature. This applies also to any waiver of this written form requirement. This written form requirement shall be deemed to have been complied with if any notice is given by e-mail or fax.

27.2. If any term of these PURCHASE TERMS or of any contract based thereon is or becomes invalid or unenforceable, the parties will immediately replace that term by a valid and enforceable term that closest reflects the intended economic purpose. The remaining terms of the contract shall thereby not be affected.

## **28. Governing law and jurisdiction**

28.1. Any disputes which may arise from these PURCHASE TERMS and the contracts based thereon shall be governed by and construed in accordance with Austrian law, to the exclusion of the UN Sales Convention and the conflict of law rules of International Private Law. All disputes arising from these PURCHASE TERMS and the contracts based thereon shall be subject to the exclusive jurisdiction of the court having subject-matter jurisdiction in Vienna.

28.2. In case of any dispute, the contractor shall not be entitled to withhold or even discontinue his contractual services.