

General terms and conditions of sale

§ 1 Scope

1. Our General Terms and Conditions of Sale apply to all - including future - legal relationships between the parties to the Contract. Agreements to the contrary are only valid if confirmed by us in writing.
2. We are not bound by any contrary or contradictory General Terms and Conditions of the other party to the Contract - hereinafter referred to as the Purchaser - even if we do not expressly object to them.
3. Our Terms and Conditions only apply in respect of Companies as defined in § 310 Section 1 BGB [Civil Code].
4. Should any provision contained in our General Terms and Conditions of Sale prove to be or become invalid the validity of all remaining provisions shall not be thereby affected.

§ 2 Quotation - quotation documents

1. Our tender is subject to confirmation in the absence of anything to the contrary ensuing from the offer.
2. We can accept orders within a period of 6 weeks. The said period commences upon receipt of order.
3. Our written Confirmation of Order is definitive in respect of supply of goods or services. Assurances regarding characteristics, supplements or ancillary agreements must be in writing to take legal effect.
4. Our sales staff are not authorised to enter into verbal ancillary agreements or to give assurances extending beyond the content of the written Contract.
5. We retain title and intellectual property rights to all diagrams, drawings, calculations and other documentation. Prior to transmission thereof to third parties the Purchaser requires our express written permission.
6. In the case of series production or special custom designs we reserve the right to apply an over or under-delivery rate of 10%. The resultant over or under-delivery shall be invoiced accordingly.
7. We are entitled to make part deliveries if this may be considered reasonable for the customer.

§ 3 Prices and terms of payment

1. If nothing to the contrary emerges from the Confirmation of Order our prices are „ex stock“ or „ex works“ and exclusive of shipping and handling charges, customs or excise duty, packaging and are liable to the prevailing rate of statutory VAT.
2. Minimum value of goods per order is EUR 100.00 net.

3. We reserve the right to adjust our prices accordingly if subsequent to conclusion of the contract cost reductions or cost increases, in particular as a consequence of collective wage agreements, changes in the cost of materials or currency fluctuations take place. Evidence of the above shall be made available to the Purchaser on request.

4. Deduction of discount requires separate written agreement. If nothing to the contrary emerges from the Confirmation of Order the purchase price shall be due for payment within 10 days minus a 2% discount or net within 30 days from date of invoice. Part invoices shall be presented for part deliveries. Payment terms shall run separately for each part invoice. Statutory provisions apply in the event of payment arrears.

5. We only accept drafts or cheques in payment and not in lieu of payment after separate agreement. Our account is not settled until the date on which the funds are available to us without having to make allowance for charge-back claims. Collection charges, discount charges or bill charges including interest shall in all cases be borne by the Purchaser and are payable immediately.

6. The Purchaser may only offset against a claim which is undisputed or legally binding. He may only exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.

7. We are entitled to invoice our services electronically.

§ 4 Product information and design modifications

1. The Purchaser undertakes to provide us with a comprehensive description of every aspect and detail of the conditions under which the goods supplied shall be used.

2. We reserve the right to introduce design modifications in the interests of technical progress provided the latter do not involve any changes in the function of the goods.

§ 5 Delivery period

1. Information regarding delivery periods is unbinding unless the delivery date has been exceptionally agreed as „binding“.

2. The delivery period shall commence with the date of confirmation of order but not however prior to provision of items required to be furnished by the Purchaser i.e. supporting documentation, official approvals and releases including receipt of any agreed payment, opening of any letter of credit required or evidence of arrangement of any collateral agreed.

3. The delivery period shall be deemed met if the goods have left the Kirchzarten warehouse facility within the delivery period.

4. Should any unforeseen impediments outside our control arise which despite the requisite care required given the particular circumstances of the case we are not in a position to avert - irrespective of whether the said impediments occur with us or at subcontractors -including force majeure (e.g. war or natural catastrophe) or delays in the supply of essential raw materials or other circumstances for which we are not responsible - we are entitled to withdraw from the Supply Contract either wholly or in part or alternatively to extend the delivery period by the duration of the impediment. We shall be entitled to the same rights in the event of strikes and lockouts at our premises or those of our upstream suppliers. We shall immediately notify our customers of any such circumstances.

5. In the event of delay in delivery the Purchaser may, following the expiry of an appropriate period of grace to no effect, withdraw from the Contract; in the event of the practical impossibility of supply of goods on our part he is also entitled to do so without notice. A period of 1 month shall be deemed appropriate. Delayed delivery shall equate to impossibility if delivery does not follow after 1 month. Claims for damages (including any consequential loss) shall be excluded irrespective of Section 6; the same shall apply in the case of reimbursement of expenses.

The liability disclaimer provision under Section 5 shall not apply if any exclusion or restriction of liability is agreed in respect of injury to life, physical injury or damage to health which is due to intentional or negligent dereliction of duty on the part of the user or intentional or negligent dereliction of duty on the part of any legal representative or vicarious agent of the user; nor shall it apply if any exclusion or limitation of liability is agreed for other forms of damage caused by any intentional or grossly negligent dereliction of duty on the part of any legal representative or vicarious agent of the user. If we culpably infringe any essential contractual obligation or any cardinal obligation liability shall not be excluded but shall be limited to typical foreseeable contractual damage. In the event of reimbursement of expenses the above shall apply accordingly.

7. If any commercial fixed date transaction has been agreed the liability limitations arising from Sections 5 and Section 6 shall not apply; the same applies if the Purchaser is in a position to claim that as a consequence of the delay for which we are responsible his interest in performance of the Contract ceases to apply.

8. In the case of call orders calls shall be notified to us in a timely manner to enable orderly manufacture and supply and at least 6 weeks prior to the desired delivery date. Call orders must be called forward within 12 months from the date of order if no other fixed deadlines have been agreed. If call does not follow or not completely within 12 months from the date of order or on the agreed call terms the Purchaser shall be deemed in default of acceptance.

9. Should the Purchaser fall into acceptance arrears or infringe duties of cooperation we are entitled to claim compensation for loss incurred by us including any additional expenses. In such event risk of accidental destruction or loss or accidental deterioration of the item of purchase shall transfer to the Purchaser if the latter is in default of acceptance.

§ 6 Transfer of risk, packaging costs and insurance

1. Upon handover to the forwarding agent or carrier and at the latest upon leaving our premises risk of accidental destruction or loss and accidental deterioration transfers to the Purchaser. Incoterms 2000 „ex works/ab Werk“ Clause (German version) applies.

2. Should handover be delayed due to any circumstance for which the Purchaser is responsible or as a consequence of the latter's instructions risk shall transfer to the Purchaser with effect from the date of notification of readiness for despatch. At the express written request of the Purchaser we undertake to insure goods stored with us at the Purchaser's cost. This also applies in those cases where a delivery period has not been expressly agreed with the proviso that risk transfers to the Purchaser 7 calendar days following notification of readiness for despatch.

3. If the Purchaser wishes we shall cover delivery by transport insurance; costs in this regard shall be borne by the Purchaser.

4. Transportation and all other packaging shall not be returned subject to requirements of the German Packaging Ordinance. Pallets are excluded. The Purchaser undertakes to arrange disposal of packaging materials at his own cost.

5. Delivered items shall be received and accepted by the Purchaser even if they display minor imperfections irrespective of his rights under the terms of §§ 433 ff. BGB.

§ 7 Reservation of title

1. Up to the point of full settlement of the purchase price including all subsidiary claims and prior to settlement of all other claims arising from the business association goods delivered shall remain our property. Up until that point the Purchaser is not entitled to pledge the goods to third parties or to assign them as security. The Purchaser shall store the reserved goods for us at no charge.

2. In the event of processing and combination of reserved title goods with other goods by the Purchaser we shall acquire joint title to the new item in the ratio of the invoiced value of the reserved title goods to the combined material entity. The joint title rights accordingly ensuing shall be considered as reserved title goods as defined in Clause 1.

3. The Purchaser is entitled to sell the reserved title goods in the due process of sale provided he is not in payment arrears in respect of our purchase price claims.

4. The Purchaser hereby assigns to us at this point in time all claims accruing to him as a result of resale of the reserved title goods vis-à-vis third parties. If the reserved title goods are sold following processing, combination or amalgamation assignment of the claim arising from resale shall apply only up to the extent of the value of the reserved title goods invoiced to the Purchaser by the Vendor. This shall also apply if the reserved title goods are resold together with other goods which similarly do not belong to the Vendor.

5. The Purchaser is also authorised to collect the claim even following assignment. We may restrict the said collection authorisation on the basis of justifiable interest or revoke the same on due cause found, in particular in the event of payment arrears. We may require that the Purchaser shall notify us of the claims assigned to him and of related debtors plus all information necessary for collection and surrender to us all associated documentation and disclose the said assignment to his debtors.

6. We undertake to release the securities due to us on the basis of the above provisions at our discretion upon the Purchaser's request to the extent that their realisable value exceeds the claim secured by 20% or more.

7. The Purchaser hereby declares his consent that the persons authorised by us in connection with assignment of the reserved title goods may enter the property or building on or in which the items are situated in order to take possession of the reserved title goods.

8. The Purchaser shall immediately inform us in respect of any confiscation, compulsory enforcement or other third party intervention adversely affecting our rights of ownership. The Purchaser shall bear the costs of measures to remedy third party interference in particular of any possible intervention procedures.

§ 8 Guarantee and liability

1. Should there be any defect for which we are responsible we are entitled to decide between rectification and replacement at our own discretion. A precondition in such an event is that the defect is not immaterial. In the event of rectification we undertake to bear the costs of transportation, labour and materials provided these are not increased due to the fact that the goods supplied have not been moved to a location other than the place of performance. Should one of or both forms of remedy prove impossible or disproportionate we are entitled to refuse it. We may refuse to effect a remedy for as long as the Purchaser fails to meet his payment obligations towards us to an extent equating to the fault-free portion of the goods or services.

2. Should rectification or replacement fail to be made within an appropriate period - with due consideration of our supply options - or if rectification and/or replacement should fail the Purchaser may demand a reduction of remuneration (abatement) or withdraw from the Contract.

3. The Purchaser's rights in the event of defect assume that the latter has met his obligation under § 377 HGB [Civil Code] to inspect and submit complaints upon receipt of the goods in a timely manner.

4. If nothing to the contrary emerges under Section 6 below further claims on the part of the Purchaser, irrespective of legal grounds (in particular claims arising from infringement of main and ancillary contractual obligations, reimbursement of expenses with the exception of those defined in § 439 II BGB, impermissible act and any other tortious liability) are excluded; this applies in particular to damage not occurring to the item supplied itself including compensation claims for lost profit; also included are claims which do not result from the faulty nature of the purchased item.

5. The above provisions also apply in the case of delivery of another item or a lesser quantity.

6. The liability disclaimer provision under Section 4 shall not apply if any exclusion or restriction of liability agreed for injury to life, physical injury or damage to health is due to intentional or negligent dereliction of duty on the part of the user or intentional or negligent dereliction of duty on the part of any legal representative or vicarious agent of the user; nor shall it apply if any exclusion or limitation of liability is agreed for other forms of damage caused by any intentional or grossly negligent dereliction of duty on the part of any legal representative or vicarious agent of the user. If we culpably infringe any essential contractual obligation or any „cardinal“ obligation liability shall not be excluded but shall be limited to typical foreseeable contractual damage; in other respects it is excluded under Section 4. The liability disclaimer additionally does not apply in those cases where under product liability legislation in the event of defects in the goods supplied there is liability in the case of personal injury or damage to property relating to privately used items. Nor does it apply in the case of assumption of a guarantee and assurance of a characteristic feature if a defect covered thereby activates our liability. In the event of reimbursement of expenses the above shall apply accordingly.

7. No guarantee is assumed in the event of damage attributable to inappropriate use, faulty assembly by the Purchaser or third parties, natural wear and tear, incorrect or negligent treatment, improper modifications carried out without our prior consent or servicing work by the Purchaser or third parties.

8. Claims for remedy, damages and replacement use shall be time-barred one year from the date of purchase of the item concerned. This does not apply to any item used in accordance with its customary purpose for a building and has caused faultiness in the latter in which case time-barring is after 5 years. Claims for abatement of price and exercise of any right of withdrawal are excluded if the claim for remedy is time-barred. In the event of operation of Sentence 3 however the Purchaser may only refuse payment of the purchase price to the extent that he would be entitled to do so as a consequence of withdrawal or abatement; in the event of withdrawal exclusion and subsequent payment refusal we are entitled to withdraw from the Contract.

9. Claims arising from manufacturer redress remain unaffected by this Section.

§ 9 Liability for collateral obligations

If through any fault on our part the item supplied cannot be used as stated under the terms of the Contract or if damage occurs as a consequence of omitted or faulty implementation of suggestions and consultations prior to and subsequent to conclusion of the Contract including other contractual collateral obligations to the exclusion of further claims on the part of the Purchaser the provisions of Clauses VIII and X shall apply accordingly.

§ 10 Withdrawal by the purchaser and other liabilities on our part

1. The following provisions shall apply in the event of infringements over and above liability for defect and shall neither exclude nor limit statutory right of withdrawal. Similarly, lawful or contractual claims due to us shall be neither excluded nor limited.
2. The Purchaser may withdraw from the Contract if the overall performance is definitively impractical, the same applying to incapacity. www.fsm-elektronik.de The Purchaser may also withdraw from the entire Contract if in the event of an order for similar items implementation of part of the supply is impossible in terms of numerical quantity due to our representation obligation and if he has no interest in partial supply; if this is not the case the Purchaser may abate the consideration accordingly; the right of withdrawal shall not apply in the case of immaterial infringement of obligation.
3. Should there be any delay in performance and provided the Purchaser grants us an appropriate period to complete performance following justification of the delay and should the said period fail to be observed the Purchaser shall be entitled to withdraw. In the event of partial delay in performance Section 1 Sentence 2 shall apply accordingly. If prior to delivery the Purchaser requires in any aspect alternative execution of the item supplied the delivery period shall be interrupted until the date of agreement regarding execution and if necessary extended by the time necessary for alternative execution.
4. Withdrawal shall be excluded if the Purchaser is solely or to a large extent predominantly responsible for the circumstance entitling him to withdrawal or if the circumstance for which we are responsible occurs at the point in time of default in acceptance on the part of the Purchaser. In the event of impracticality we retain in the above cases our claim to consideration as defined in § 326 Section 2 BGB [Civil Code].
5. Further claims on the part of the Purchaser, irrespective of legal grounds (in particular claims arising from default at the point of conclusion of the Contract, infringement of main and ancillary contractual obligations, reimbursement of expenses, impermissible act and any other tortious liability) are excluded; this applies in particular to damage not occurring to the item supplied itself including compensation claims for lost profit; also included are claims which do not result from the faulty nature of the purchased item. This shall not apply if the cause of damage is due to intent or gross negligence on our part, our legal representatives or vicarious agents. Nor shall this apply if the damage arises from culpable injury to life, physical injury or damage to health. To a similarly lesser degree liability in the event of assumption of a guarantee is excluded if an obligation infringement covered thereby activates our liability. If we culpably infringe any essential contractual obligation or any „cardinal“ obligation liability shall not be excluded but shall be limited to typical foreseeable contractual damage.

§ 11 Place of performance and jurisdiction

1. Place of performance of both parts arising from all legal relationships is Kirchzarten.
2. In respect of the legal relationship between the Purchaser and us the laws of the Federal Republic of Germany apply. UN Sale of Goods legislation (CISG) is expressly excluded.
3. Legal venue for all disputes arising from the contractual relationship is Kirchzarten. We are also entitled to file an action at the domicile of the Purchaser.