

# General terms and conditions of Sales and Delivery

## 1. Scope

1.1. These General Terms and Conditions of Sale and Delivery shall apply to all contracts for the delivery of goods and the provision of other services by FCT Ingenieurkeramik GmbH (hereinafter "Supplier") and the Buyer.

1.2 Orders shall be executed in accordance with the following conditions. Deviating terms and conditions of the Buyer shall only apply if they have been expressly accepted by the Supplier.

1.3 In export business, the INCOTERMS 2020 shall apply for the interpretation of customary delivery clauses. Deviating conditions must be agreed by contract. Legalization and consular fees shall be borne by the Purchaser.

## 2. Conclusion and content of contract

2.1 Offers of the supplier are always subject to change. Samples, specimens and illustrations are only approximate. Representations in samples, specimens and illustrations as well as other product descriptions are no guarantees. The granting of a guarantee requires the explicit written confirmation of the supplier.

2.2 The scope of delivery is determined by the written order confirmation of the supplier and the product description contained therein. If no such confirmation has been issued, the delivery note shall be deemed to be the order confirmation. In the case of custom-made products, deviations from the quantity ordered of up to +/- 10% are allowed.

2.3 Deviations due to production or technical progress are permissible within the scope of what is customary and reasonable in the industry.

2.4 Subsidiary agreements and amendments are only effective if they are confirmed in writing by the supplier.

## 3. Prices

3.1. All prices are in EUR plus the value added tax applicable on the day of invoicing. They are valid ex works and do not include packaging, freight, customs, postage, insurance and other additional costs.

3.2 Drafts, drawings, models and similar preparatory work initiated by the customer shall be paid to the supplier, even if the order is not placed.

## 4. Payment terms

4.1. Payments are to be made within 10 days of the invoice date without deduction by bank transfer.

4.2 Other means of payment, such as cheques, shall only be accepted by special agreement between the parties. In the event of payment by other means of payment, the amount owed shall not be deemed paid until it has been credited to the Supplier's account.

4.3 The Purchaser may only set off or exercise a right of retention based on claims that are undisputed or have been declared final and absolute.

4.4 In the event of default by the Purchaser, interest shall be charged at the interest rate charged by the banks, but at least 9% above the base rate pursuant to § 288 para. 2 BGB (German Civil Code). In addition, in the event of default of payment by the Purchaser, the Supplier shall be entitled to pay a flat-rate recovery fee of EUR 40.00 in accordance with § 288 para. 5 BGB. The Supplier reserves the right to assert further claims for damages, whereby the collection lump sum shall be set off against a claim for damages, provided that the damage is justified in costs of legal action. Any discounts and other benefits shall cease to apply if the delay occurs.

4.5 If the terms of payment are not complied with or if there are justified doubts about the creditworthiness of the customer, the supplier may demand advance payment and payment of all outstanding invoices, including those not yet due, retain goods not yet delivered, retrieve deliveries not yet paid for at the customer's expense or withdraw from the contract.

4.6 An agreed security retention can be redeemed by the supplier by means of a bank guarantee for the net amount.

## 5. Delivery dates and deadlines

5.1. Dates and deadlines for deliveries are only binding if they are expressly confirmed in writing by the supplier. Their observance presupposes that the customer has fulfilled his contractual obligations and made agreed advance payments or fulfilled other agreed advance performance and cooperation obligations. If the aforementioned conditions are not met, the delivery periods shall be extended accordingly.

5.2 If the supplier is in default due to his own fault and if he has allowed a reasonable grace period to be set by the purchaser, which must be at least 4 weeks, to elapse unused, the purchaser has the right to withdraw from the contract. Claims for damages can only be asserted to the extent specified in clause 9 of these terms and conditions. At the Supplier's request, the Purchaser shall be obliged to declare within a reasonable period of time whether he withdraws from the contract due to the delay in delivery or insists on delivery.

5.3 The delivery period shall be extended appropriately if unforeseeable obstacles arise for the supplier or his suppliers, e.g. force majeure, official intervention, delays in the delivery of energy, lack of means of transport, strike and lockout.

## 6. Shipping, Transfer of risk

6.1 Shipment shall be made at the expense and risk of the purchaser to his address, unless expressly agreed otherwise in writing. In the absence of other agreements, the supplier chooses packaging, shipping route and type of shipping.

6.2 The costs for packaging shall be borne by the purchaser. If reusable packaging is made available on loan, the return delivery to the Supplier shall be free of charge. Damaged reusable packaging will not be taken back. The customer is obliged to reimburse the supplier for the costs incurred for the replacement of the damaged work goods, provided that the damage occurred after the transfer of risk.

6.3 The risk shall pass to the Purchaser upon delivery of the goods to the carrier. This also applies to deliveries prepaid, self-collection and in works traffic. Insurance against damage of any kind will only be taken out at the request of the purchaser and for his account.

6.4 Delivered items, even if they are defective, must first be accepted by the purchaser, irrespective of existing warranty claims.

6.5 If dispatch or delivery is delayed at the request of the customer, the supplier may, starting one month after notification of readiness for dispatch, charge storage fees amounting to 1% of the net price of the stored items of the delivery for each month or part thereof. The Purchaser reserves the right to prove that no or lower storage costs were incurred. The supplier reserves the right to prove and assert higher storage costs.

## 7. Retention of title

7.1 The delivered goods remain the property of the supplier until all claims arising from the business relationship between the supplier and the customer have been paid in full. The purchaser is entitled to resell the goods subject to retention of title in the normal course of business. In the event of resale on credit, the purchaser is obliged to secure the rights of the supplier. He is not permitted to pledge the goods or assign them as security without the explicit consent of the supplier.

7.2 Extended retention of title applies. The purchaser assigns his claims from the resale of the reserved goods to the supplier already now, the supplier accepts the assignment. Irrespective of the assignment and the supplier's right to collect, the purchaser is entitled to collect as long as he fulfils his obligations to the supplier and/or does not suffer financial collapse. At the supplier's request, the customer shall provide him with the information required for collection regarding the assigned claims and inform the debtors of the assignment.

7.3 If the goods subject to retention of title are treated or processed, the Supplier shall be deemed the manufacturer and shall acquire ownership of the intermediate and end products. If the Purchaser acquires sole ownership of the new item when the reserved goods are combined, mixed or blended with other goods, the contracting parties agree that the Purchaser shall grant the Supplier co-ownership of the item in proportion to the value of the reserved goods. In all cases, the customer shall keep the new item in safe custody for the supplier free of charge. The rules for resale (clause 7.2 of these terms and conditions) shall apply accordingly in the amount of the value of the reserved goods.

7.4 The Purchaser shall notify the Supplier immediately in writing of any execution measures by third parties against the reserved goods or the claim assigned in advance, handing over the documents necessary for intervention, grant the Supplier or his representative access to the storage location of the goods and assume the costs of any intervention.

7.5 The supplier undertakes to release the securities to which he is entitled in accordance with the above provisions at his discretion at the request of the customer to the extent that the value exceeds the claims to be secured by 10%.

7.6 The purchaser is obliged to store the reserved goods properly and to insure them at his own expense against theft, breakage, water and other damage. The amount covered by the insurance to be taken out and maintained by the supplier must cover at least the value of the reserved goods. The insurance claims shall be deemed assigned to the Supplier in the amount of the value of the reserved goods.

7.7 The Supplier is entitled to withdraw from the contract and take back the reserved goods in the event of breaches of duty by the Purchaser, in particular in the event of default in payment, after the expiry of a reasonable period of grace set for the Purchaser without result. The statutory provisions regarding the dispensability of setting a deadline remain unaffected. The purchaser is obliged to surrender the goods.

7.8 The supplier reserves his right of ownership and copyright to cost estimates, drawings and similar documents. They may not be made accessible to third parties.

7.9 If, in the case of deliveries abroad, a retention of title cannot be agreed with the same effect as under German law, but the retention of other rights to the delivery item is permitted, the supplier is entitled to these rights. The purchaser must cooperate in every respect in this respect.

## 8. Defects

8.1. If there is a defect, the supplier shall, at his discretion, either deliver a replacement or repair the defect. Replaced parts become the property of the supplier. If the Supplier allows a reasonable period of grace to be set by the Purchaser to elapse without remedying the defect or if the repair or replacement delivery fails twice, the Purchaser may withdraw from the contract or reduce the remuneration. If only a part of the delivery is defective, the purchaser is only entitled to withdraw from the contract with regard to the defective delivery, unless the partial delivery is not usable for him.

8.2 Warranty claims are subject to a limitation period of 12 months from the transfer of risk. This does not apply if the law according to §§ 438 para. 1 No. 2 (buildings and items for buildings) and 634a para. 1 No. 2 (building defects) BGB prescribes longer periods and in all cases of No. 9 of these terms and conditions.

8.3 Obvious defects must be notified in writing immediately, but at the latest within 10 days of receipt of the delivery, in accordance with § 377 Para. 1 HGB (German Commercial Code). Non-obvious defects are to be notified in writing

immediately after discovery. Otherwise, the delivery shall be deemed to have been properly performed. Further obligations to examine and give notice of defects according to §§ 377/ 378 HGB remain unaffected.

8.4 Goods returns require mutual agreement. The customer is liable for damage on return transport unless he has exercised the care required for proper return.

8.5 No warranty is given for defects caused by non-compliance with the supplier's instructions, generally accepted rules of technology or the manufacturer's instructions regarding installation, commissioning or use or unsuitable or improper use or which are based on natural wear and tear. Warranty claims are further excluded if the customer or a third party carries out modifications or repair work without the prior consent of the supplier or if the defect is due to the use of supplies of the customer, unless the defect is not causally connected with the modifications/repair work or supplies. The same applies if the cause of the defect did not exist at the time of the transfer of risk.

8.6 Further claims of the customer against the supplier and his vicarious agents are excluded, in particular a claim for compensation for damage not occurring to the delivery item itself and for consequential damage. This does not apply in the cases of item 9 of these terms and conditions.

8.7 The above provisions shall apply mutatis mutandis to defects which have arisen as a result of advice or within the framework of other contractual ancillary obligations, in particular instructions for the operation and maintenance of the delivery item.

## 9. Liability

9.1. Unless otherwise provided for in these terms and conditions, the supplier shall only be liable for damages and compensation for futile expenses due to the violation of contractual or non-contractual obligations a) without limitation of the amount of damages, for damages caused by intent or gross negligence of the legal representatives, executives or vicarious agents of the Supplier, by serious organizational fault, by injury to life, body or health or in the context of the assumption of a guarantee or a procurement risk,

b) with limitation to the damages which are typical and foreseeable on the basis of the contractually specified use of the goods, for damages from culpable violation of essential contractual obligations, the fulfilment of which makes the proper execution of the contract possible in the first place and on the observance of which the customer may regularly rely (so-called cardinal obligations), unless intent or gross negligence on the part of the legal representatives, executive employees or vicarious agents of the supplier is present or liability is assumed on account of injury to life, body or health or the assumption of a guarantee or a procurement risk.

The above provision does not imply a change in the burden of proof to the disadvantage of the customer.

9.2 The legal liability for fraudulent intent or for personal injury (e.g. under the Product Liability Act) remains unaffected by the above provisions.

## 10. Molds, Tools, Sales documents

10.1. The costs for the production, procurement, modification, repair or provision of production molds and tools shall be borne by the customer. The ownership of such molds and tools and the associated copyrights shall remain with the supplier even after payment. This shall not apply if the customer provides his own production molds or tools for the execution of his order without the supplier having made any substantial changes to them.

10.2 The supplier undertakes to use the customer's production molds and tools only for the execution of the customer's orders, unless the supplier has made substantial changes to them.

10.3 The supplier undertakes to keep the manufacturing molds and tools paid for by the purchaser ready for use until natural wear and tear has occurred, but for no longer than 2 years after the last delivery.

10.4 All sales documents, such as catalogues, sample books, price lists and the like, which have come into the possession of the purchaser, remain the property of the supplier and must be returned to him on request.

## 11. IP Rights

11.1. The supplier shall be liable for ensuring that the delivery is free from industrial property rights and copyrights of third parties. If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR by the Supplies made by the Supplier and used in conformity with the contract, the Purchaser shall notify the Supplier thereof without undue delay in writing. The Purchaser shall not recognize any claims of third parties on its own initiative. The Purchaser shall support the Supplier to the best of its ability and within reason in the exercise of its rights in and out of court. The Supplier shall, at its option, defend or satisfy the claim or exchange the affected services for equivalent services in accordance with the contractual provisions, if this is reasonable for the Purchaser. If a remedy within the meaning of the above provisions is not possible at reasonable expense, the Supplier shall reimburse the Purchaser the price paid, considering an appropriate compensation for use. In this case, the customer is obliged to return the services - as far as possible - to the supplier. Further claims of the customer are excluded. The provisions in Section 9 of these terms and conditions shall apply accordingly.

If the Purchaser does not act in agreement with the Supplier and in accordance with the above provisions when defending itself against claims of third parties due to the infringement of industrial property rights, the Supplier shall be released from the above obligations. The same shall apply if the claims of third parties are based on the fact that the Purchaser has modified the Supplier's services or used them under conditions other than those contractually agreed.

11.2 The Purchaser shall be liable for ensuring that the execution of the order placed by him on the basis of his own regulations for shapes, colors, sizes and weights does not infringe the property rights of third parties. In

the event of any claims by third parties, he shall indemnify the supplier and compensate him for any damage he may have suffered. If the supplier is prohibited from manufacturing or supplying by a third party with reference to a property right belonging to him, the supplier is entitled to stop work without examining the legal situation. If the supplier is aware of any third-party industrial property rights which are obviously infringed by the delivery, he shall inform the customer accordingly.

11.3 Any documents of the supplier provided in connection with the placing of the order may not be copied or made available to third parties without the consent of the supplier. The supplier is exclusively entitled to property rights and copyrights.

## 12. Place of performance, Place of jurisdiction

12.1 The place of performance for all deliveries and payments is the supplier's place of business. The place of jurisdiction for all disputes arising from the contractual relationship is the court which is locally and factually competent for the supplier, insofar as the purchaser is a merchant or legal entity under public law or a special fund under public law. The supplier may also bring an action at the customer's head office.

12.2 The law of the Federal Republic of Germany shall apply exclusively, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## 13. Confidentiality, Data protection

13.1 The customer undertakes to treat as confidential all objects and information received or becoming known to him from the supplier before or during the execution of the contract, which are legally protected or contain business or trade secrets or are designated as confidential, also beyond the end of the contract, unless they are publicly known without breach of the obligation of secrecy. The customer shall keep and secure these objects and information in such a way that access by third parties is excluded. In particular, the customer assures that confidential information will not be made accessible to third parties in any other form and that all reasonable precautions will be taken to avoid access to confidential information by third parties.

13.2 The Supplier shall collect, process and use personal data of employees and representatives of the Buyer for the purpose of implementing the contract in accordance with Art. 6 para. 1 lit. b) of the EU Data Protection Regulation, if applicable, and shall observe the provisions of the EU Data Protection Regulation and the German Federal Data Protection Act.

## 14. Binding nature of the contract, Written form

14.1 Should individual provisions of these General Terms and Conditions of Contract be or become invalid in whole or in part, or should there be a gap in these General Terms and Conditions of Contract, the validity of the remaining provisions shall not be affected thereby. In place of the invalid provision, the provision which corresponds to the meaning and purpose of the invalid provision shall be deemed agreed. In the event of a gap, the provision which corresponds to what would have been agreed between the parties according to the meaning and purpose of the contract had the matter been considered from the outset shall be deemed agreed.

14.2 Any amendment or addition to the contract between the Buyer and the Supplier must be made in writing to be effective. The written form requirement agreed herewith can only be effectively cancelled or amended if the written form requirement is complied with. Oral agreements do not exist.

Status: January 2020