

**General Purchasing Terms and Conditions of FÄTH GmbH,
Schwabacher Str. 10, 01665 Klipphausen, Germany**

§ 1

General, scope of application

- 1.1 These General Purchasing Terms and Conditions (the "Terms") apply to all business relationships with our business partners and suppliers ("Seller"). These Terms only apply if the Seller is a business (Section 14 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB), a legal entity under public law or a special fund under public law.
- 1.2 These Terms particularly apply to contracts for the sale and/or supply of moveable items ("Goods"), regardless of whether the Seller has produced the Goods itself or has purchased these from suppliers (Sections 433 and 651 BGB). Unless agreed otherwise, the Terms in the version valid at the time the buyer's order is placed or in any case the version most recently communicated to it in text form apply as a master agreement for similar future contracts, without us having to refer to these again in each individual case.
- 1.3 These Terms apply exclusively. Deviating, contradictory or supplementary General terms and conditions of the Seller only form part of the agreement if and to the extent that we have expressly consented to their application in writing. The requirement for consent applies in any event, for example even if we accept the Seller's deliveries without reservation while being aware of its general terms and conditions.
- 1.4 Individual agreements (including collateral agreements, additions and amendments) entered into in the individual case with the Seller always take precedence over these Terms. As for the content of such agreements, a written contract or our written confirmation is authoritative, subject to evidence to the contrary.
- 1.5 Legally relevant declarations and notices which are to be provided to us by the Seller after conclusion of the contract (e.g. deadlines, payment reminders, notice of rescission) are only valid if made in writing.
- 1.6 References to the application of statutory regulations are for clarification purposes only. Statutory regulations therefore also apply without such clarification, unless they are directly amended or expressly excluded in these Terms.

§ 2

Conclusion of contract

- 2.1 Our order is deemed binding at the earliest upon submission or confirmation in writing. The Seller must point out any obvious mistakes (e.g. spelling or calculation errors) or missing information in the order documents to us before accepting such so that these/this can be corrected or provided; the contract is otherwise deemed not to have been concluded.
- 2.2 The Seller is required to confirm our order in writing within 3 (three) business days or to carry out the order without reservation by dispatching the Goods (acceptance).

Any late acceptance is deemed to be a new offer and requires our acceptance. This also applies if the Seller deviates quantitatively or qualitatively from our order in its confirmation; this particularly also includes any deviation from the delivery time specified by us in the order.

- 2.3 No claim exists to remuneration relating to expenses incurred on the part of the Seller in connection with the preparation and/or creation of an offer (including customer visits at our premises). This applies irrespective of whether a contract is concluded with respect to this offer or not.

§ 3

Delivery time and delay in delivery

- 3.1 The delivery time specified by us in the order is binding. If the delivery time is not specified in the order and not otherwise agreed, performance is to be rendered immediately. The Seller is obliged to inform us in text form without undue delay if it anticipates, for whatever reason, not being able to meet the agreed delivery times.
- 3.2 If we are in the individual case unable to accept the Goods at the agreed delivery time, the delivery time is extended to an appropriate extent if we inform the Seller about this in due time, but on no account by more than 3 (three) months. This information is deemed to have been given in due time if it is received by the Seller at least two weeks before the relevant delivery time in accordance with Section 3.1. The Seller will store Goods already manufactured for us at its expense.
- 3.3 If the Seller does not render performance or does not do so within the agreed delivery period or is in default, our rights, in particular with respect to rescission and damages, are determined on the basis of the applicable statutory regulations. The provisions in Section 3.4 below are not affected by this.
- 3.4 If the Seller is in default, we can, besides more comprehensive statutory claims, demand flat-rate compensation of our damage due to default of 1% of the net price per full calendar week, however, not more than 5% of the net price of the Goods supplied late. We reserve the right to evidence that greater damage has been incurred. The Seller has the right to evidence that no damage at all or only significantly less damage has been incurred.

§ 4

Performance, delivery, passing of risk, delayed acceptance

- 4.1 Without our prior written consent the Seller is not entitled to have the performance owed by it carried out by third parties (e.g. subcontractors). The Seller bears the procurement risk for its performance, unless agreed otherwise in the individual case (e.g. limitation to goods on stock).
- 4.2 The Seller delivers DDP Incoterms 2010 to the location specified in the order ("destination"). If the destination is not specified and nothing else has been agreed, the delivery is to take place to our registered office in 01665 Klipphausen, Germany. The relevant destination is also the place of performance for the delivery and any subsequent performance (obligation to be performed at buyer's address).
- 4.3 The Seller is not entitled to carry out partial deliveries or early deliveries without our prior written consent.

- 4.4 A delivery note including the following information and evidence is to be enclosed with the delivery: (issue and dispatch) date, the content of the delivery (article number and quantity), our order identifier (date and number) and, at our request, information relevant to customs and export control (origin, tariff heading, customs value) with appropriate accompanying documents (supplier's declarations, certificates or origin, authorisations etc.). If the Seller delivers from outside the EU, it must specify its EU VAT identification number. If the delivery note is missing or incomplete, we are not responsible for the delays in processing and payment resulting from this. A dispatch note with the same content is to be sent to us separately from the delivery note.
- 4.5 The Seller must pack the Goods securely so as to prevent damage during loading, transport and unloading. The packaging and other consumables and auxiliary materials used for the delivery of the Goods (e.g. filling materials) must be reusable or capable of being disposed of or recycled by us free of charge.
- 4.6 If the Seller delivers to the destination, it must at its own expense comply with all safety regulations and procedures applicable there. This in particular applies even if the agreed destination is at our customers' premises. We will make the safety regulations and procedures applicable in each case available to the Seller upon request.
- 4.7 The risk of accidental loss and accidental deterioration of the Goods passes to us upon handover at the place of performance. If acceptance of Goods has been agreed, such acceptance is decisive for the passing of risk. The statutory regulations of the law regarding contracts for work and services otherwise also apply correspondingly in the event of acceptance of Goods. Handover or acceptance of Goods is deemed to have taken place if we default on acceptance. If the Goods cannot be accepted, the Seller bears the expense necessary for repeated acceptance.

§ 5 Prices and payment terms

- 5.1 The price specified in the order is binding. All prices include statutory VAT, unless this is stated separately; this does not apply if the sale is exempted from VAT in the individual case.
- 5.2 Unless agreed otherwise in the individual case, the price includes all performances and ancillary performances of the Seller (e.g. assembly, installation) and all incidental expenses (e.g. proper packing, transport costs including any transport and third-party liability insurance). The Seller must at our request take back the packaging material.
- 5.3 The agreed price is due for payment within 30 (thirty) calendar days commencing upon complete delivery and performance (including acceptance of Goods, if agreed), and receipt of a proper invoice. If we make payments within 14 (fourteen) calendar days, the Seller grants us a discount of 3% on the net invoice amount. If we pay the invoice by bank transfer, the payment will be deemed to be made in due time if our transfer order has been received by our bank before the payment deadline expires; we are not responsible for any delays caused by the banks involved in the payment process.
- 5.4 Payments made by us do not constitute any recognition of the delivered Goods as being in compliance with the contract.

- 5.5 We do not owe any interest on maturity. The statutory regulations apply for payment default, whereby a written payment reminder from the Seller is required in any case
- 5.6 We are entitled to set-off and retention rights and the defence of non-fulfilment of contract to the extent provided by law. We are in particular entitled to withhold due payments as long as we still have claims against the Seller due to incomplete or defective performance.
- 5.7 The Seller has set-off or retention rights only on the basis of counterclaims which have been finally established by a court of law or are undisputed.

§ 6

Non-disclosure and retention of title

- 6.1 We reserve ownership rights and copyrights to product specifications, technical documentation including illustrations, plans, drawings, calculations, usage instructions, product descriptions and other documents. Such documents are to be used exclusively for the contractual performance and are to be returned to us after discharge of the contract. The documents may not be disclosed to third parties, even after termination of the contract. The non-disclosure obligation will only cease to apply when and to the extent that the knowledge contained in the documents provided has entered the public domain.
- 6.2 The above provision applies accordingly to all substances and materials (e.g. software, finished and semi-finished products), as well as to tools, templates, samples and other objects which we provide to the Seller for production ("Provided Materials") or which are procured or manufactured by the Seller exclusively for contractual purposes, provided their procurement or manufacture is remunerated by us ("Manufacturing Equipment"). Any Provided Materials and Manufacturing Equipment remain our property and are as such – as long as they are not processed – to be stored separately at the expense of the Seller and to be insured against destruction and loss to an appropriate extent.
- 6.3 Any processing, mixing or combining (further processing) by the Seller of the Provided Materials and the Manufacturing Equipment is carried out for us.
- 6.4 Ownership of the Goods is to be transferred to us unconditionally and without regard to payment of the purchase price. If, however, in the individual case we accept an offer of the Seller for transfer of ownership conditional on payment of the purchase price, the Seller's retention of title ceases to exist at the latest upon payment of the purchase price for the Goods delivered. We remain authorised to resell the Goods in the normal course of business even before payment of the purchase price subject to advance assignment of the resulting claim. All other forms of retention of title, in particular extended or assigned retention of title and retention of title extended to further processing, are therefore excluded in any event.

§ 7

Quality of the Goods, liability for defects

- 7.1 Unless provided for otherwise below or in the individual case in a quality assurance agreement, the applicable statutory regulations apply to our rights with respect to material defects and defects in title relating to the Goods (including incorrect and short delivery, as well as improper installation, defective installation, operating or user manuals) and with respect to other breaches of duty by the Seller and its agents.

- 7.2 In accordance with statutory regulations, the Seller is in particular liable for the fact that the Goods have the agreed quality when risk passes to us. The product descriptions which – in particular through specification or reference in our order – are the subject of the relevant contract or which have been made public (in particular on the Internet or in catalogues) by the Seller or the manufacturer are in any event deemed as an agreement on quality.
- 7.3 The Seller has sole responsibility for the marketability of the Goods in the Federal Republic of Germany, i.e. it will above all ensure that the Goods, including any packaging to be supplied, comply with all relevant regulations concerning the placing of the Goods on the market, all codes of practice, in particular DIN standards and the relevant industry standards in their most recent version as amended. This in particular includes all substance, labelling and packaging regulations and other product or market-related obligations. In addition, the Seller is also liable for the marketability of the Goods in other countries if it had knowledge of the intended use of the Goods in the other country (destination). Insofar as we have statutory labelling and/or information obligations in relation to the Goods (if applicable also in processed form), the Seller will upon request provide us with all information and evidence required to fulfil these obligations (certificates of conformity, data sheets, supplier's declarations etc.) in a form suitable for forwarding these to us; this also applies if we are obliged to provide our contractual partners with corresponding information and evidence.
- 7.4 If the Goods are software, the Seller is obliged to provide the software in source code and to hand over the documentation necessary for us to use it, in any case including the user documentation, the installation description, the interface description, the source code documentation and the maintenance documentation.
- 7.5 For all technical equipment including software, the Seller will provide the technical documentation and operating instructions in the project language specified in the order. If the project language is not defined, the Seller will hand over the aforementioned documents in German.
- 7.6 Notwithstanding Section 442 (1) sentence 2 BGB, we are fully entitled to claims for defects even if the defect remained unknown to us upon conclusion of the contract as a result of gross negligence.
- 7.7 The statutory regulations apply to the commercial obligation to inspect the Goods and report defects (Sections 377, 381 of the German Commercial Code (*Handelsgesetzbuch* – HGB)) subject to the following conditions: our obligation to inspect the Goods is limited to defects which become evident during our inspection of incoming goods by external examination including of the delivery papers and during random quality control tests (e.g. transport damage, incorrect and short deliveries (“Obvious Defects”). Where acceptance of Goods has been agreed, no obligation to inspect the Goods exists. Otherwise, it is decisive to what extent an inspection is feasible in the normal course of business taking into account the circumstances of the individual case. Our notification of latent defects discovered later remains unaffected.
- 7.1 Our notification of defects is in all cases deemed to have been made promptly and in due time if it is received by the Seller within two (2) weeks in the case of Obvious Defects and within two (2) weeks of knowledge of the defect in the case of latent defects.

- 7.8 The Seller bears all expenses necessary for subsequent performance. If we have installed the defective Goods into another object or attached them to another object in accordance with their type and intended use, the Seller is also obliged, within the scope of subsequent performance, to reimburse us the necessary expenses for the removal of the defective or the attachment of the repaired or delivered defect-free Goods; at our request, the Seller is obliged to remove and detach the defective Goods itself and to install the repaired or delivered defect-free Goods into the other object or to attach them to the other object. The costs incurred by the Seller for the purposes of inspection and subsequent performance are also borne by it if it turns out that no defect in fact existed. Our liability for damages in the event of an unjustified request to rectify defects remains unaffected; in this respect, however, we are only liable if we recognised or due to gross negligence did not recognise that no defect existed.
- 7.9 If the Seller does not meet its obligation to provide subsequent performance – at our discretion by rectifying the defect (repair) or by delivering an item free of defects (replacement delivery) – within an appropriate time period set by us, we can rectify the defect ourselves and request the Seller to reimburse us the costs necessary for this or request a corresponding advance. No time period has to be set if the repair by the Seller fails or is unreasonable for us (e.g. due to particular urgency or the imminent occurrence of disproportionate damage); we will inform the Seller about such circumstances without undue delay, if possible in advance.
- 7.10 Otherwise, in the event of material defects and defects in title, we are entitled to reduce the purchase price or rescind the contract in accordance with the applicable statutory regulations. Furthermore, we are entitled to damages and reimbursement of expenses in accordance with the applicable statutory regulations.

§ 8

Recourse against suppliers

- 8.1 In addition to our claims for defects, we are entitled without limitation to our statutory rights of recourse within the supply chain (recourse against the suppliers pursuant to Sections 445a, 445b, 478 BGB). We are in particular entitled to demand precisely the type of subsequent performance (repair or replacement delivery) from the Seller which we owe our customers in the individual case. Our statutory right to choose the remedy (Section 439 (1) BGB) is not restricted by this.
- 8.2 If we request the Seller, briefly describing the circumstances, for a written statement before we recognise or satisfy any claim for defects asserted by our customer (including reimbursement of expenses in accordance with Sections 445a (1), 439 (2) and (3) BGB) and the Seller does not provide a written statement or does not provide such within a reasonable period and if no mutually acceptable solution is reached either, the claim for a defect actually granted by us is deemed as owed to our customer; in such case, the Seller has the obligation to provide evidence to the contrary. This also in particular includes the reimbursement of expenses for any inspection conducted at the customer's premises, for any replacement delivery, any repair, for removal and installation and the acceptance of the Goods which have been repaired or delivered as a replacement and for travel and transport costs.
- 8.3 Our claims based on recourse against suppliers also apply if the Goods have been processed further by us or one of our customers before they are sold.

§ 9

Intellectual property rights

- 9.1 In order to enable the intended use of the Goods – in particular with regard to associated software and documentation – the Seller hereby grants us an irrevocable, non-exclusive and free licence or a corresponding right of use to use, process, repair, reproduce and/or sell the Goods to the extent required. The licence includes all intellectual property rights necessary to use the Goods as intended. In the event that copyrights exist for Goods, we are granted a transferable, non-exclusive right of use unlimited in terms of its content for all known and unknown types of use, which includes the rights to reproduce, distribute, publicly perform, make publicly available and process the Goods.
- 9.2 In the event that the Seller develops, modifies or manufactures Goods specifically to our specifications, requirements or instructions (“Developments”) under the purchase contract, the Seller will inform us in writing without undue delay of any intellectual property rights existing or arising in respect of such Developments. At our request, the Seller is obliged to transfer these intellectual property rights to us or to grant us transferable, sub-licensable, exclusive rights of use unlimited in terms of their content for all known and unknown types of use, including the right of reproduction, distribution, public performance, making available to the public as well as the right of processing and further development. The Seller will ensure that it obtains the intellectual property rights necessary for this transfer of rights from its employees and/or other agents. Payment of the agreed purchase price for the Goods is deemed to constitute consideration for the transfer of rights. The Seller will keep the Developments secret from third parties, use them exclusively for the purposes of the purchase contract and will not sell any Developments to third parties without our prior written consent. Section 6.1 applies accordingly.
- 9.3 The Seller is liable for ensuring that the delivery of the Goods does not infringe any intellectual property rights of third parties within Germany or the country of destination of the Goods which are known to the buyer. The scope of liability is governed by Section 7 accordingly, unless otherwise provided for in the following provisions. Section 12.2 applies with respect to the statute of limitations. If claims are made against us by a third party for infringement of intellectual property rights relating to the Goods, the Seller is obliged to indemnify us against such claims upon first written request. The indemnification obligation refers to all expenses necessarily incurred by us due to or in connection with the claim by the third party (including the costs of legal action), unless the Seller proves that it is not responsible for the defect in title.

§ 10

Compliance

- 10.1 The Seller is obliged to act in compliance with the law at all times and to comply with all relevant national and international regulations, in particular with regard to data protection, substance law including chemical law/REACH and the German Electrical and Electronic Equipment Act (*Elektrogesetz – ElektroG*), occupational health and safety, anti-corruption (including corruption and fraud) as well as customs and foreign trade law. If the Seller breaches any of the above obligations and if claims are made against us by third parties (including authorities)

as a result, the Seller is obliged to indemnify us against such claims. In the case of manufacturer's liability, Section 11 of these Terms applies. Other contractual and/or legal claims, such as claims for damages and/or premature termination of the contract, remain unaffected.

§ 11

Producer's liability

- 11.1 The Seller must indemnify us against third-party claims to the extent that it is responsible for the product damage and it is or would be liable itself to third parties.
- 11.2 Within the scope of its indemnification obligation the Seller must reimburse expenses in accordance with Sections 683, 670 BGB which result from or in connection with any claims made by third parties, including recall campaigns carried out by us. We will inform the Seller about the content and scope of recall measures to the extent possible and reasonable and give the Seller the opportunity to provide its comments. Further statutory claims remain unaffected.
- 11.3 The Seller must take out and maintain product liability insurance with fixed coverage of at least EUR 5 million per personal/property damage claim and EUR 10 million per year.

§ 12

Limitation period

- 12.1 The reciprocal claims of the parties become statute-barred in accordance with the applicable statutory regulations unless provided for otherwise below.
- 12.2 Notwithstanding Section 438 (1) No. 3 BGB, the general limitation period for claims for defects is 3 (three) years commencing when risk passes. If acceptance of Goods has been agreed, the limitation period commences upon acceptance of Goods. The 3-year limitation period applies correspondingly also for claims based on defects in title, whereas the statutory limitation period for third-party claims for the return of property (Section 438 (1) No. 1 BGB) remains unaffected; furthermore, claims based on defects in title do not on any account become statute-barred as long as the third party can still assert such claims against us, in particular due to the fact that such claims have not become statute-barred. Notwithstanding Section 445b (1) BGB, the limitation period for claims based on recourse against suppliers is 3 (three) years; the suspension of the limitation period in accordance with Section 445b (2) BGB remains unaffected.
- 12.3 The limitation periods under the law governing the sale of goods, including the extension above, apply to the extent prescribed by law for all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period applies to these (Sections 195, 199 BGB), unless the application of the limitation periods under the law governing the sale of goods leads to a longer limitation period.

§ 13

Choice of law and jurisdiction

- 13.1 These Terms and the contractual relationship between us and the Seller are governed by the law of the Federal Republic of Germany subject to exclusion of international conventions, in particular the United Nations Convention on Contracts for the International Sale of Goods.

13.2 If the Seller is a merchant as defined by the German Commercial Code (*Handelsgesetzbuch* – HGB), a legal entity under public law or a special fund under public law, the competent court for our registered office in 01665 Klipphausen, Germany, has exclusive – and also international – jurisdiction for all disputes arising from the contractual relationship. The same applies if the Seller is a business in the meaning of Section 14 BGB. We are, however, in all cases also entitled to file legal action at the place of performance of the delivery obligation in accordance with these Terms or an individual agreement which takes precedence or with the courts which have general jurisdiction for the Seller. Statutory regulations which take precedence, in particular with respect to exclusive jurisdiction, remain unaffected.

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