

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

§ 1

General, scope of application

- 1.1 These General Terms and Conditions of Business (the "Terms") apply to all our business relationships with our customers ("Buyer"). These Terms only apply if the Buyer is a business (Sec. 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 we have produced the Goods ourselves or have purchased these from suppliers (Sections 433 and 651 BGB) as well as to contracts covering the design, assembly, and commissioning of the Goods and/or maintenance and repair work. 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 Buyer only form part of the contract if and to the extent that we have expressly consented to their application. This requirement for consent applies in any event, for example even if we carry out delivery to the Buyer 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 Buyer 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 Buyer after conclusion of the contract (e.g. deadlines, notifications of defects, notice of rescission or price reduction) 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 amended or expressly excluded in these Terms.

§ 2

Conclusion of contract

- 2.1 Our offers are subject to alteration and non-binding. This also applies if we have provided the Buyer with catalogues, technical documentation (e.g. drawings, plans, computations, calculations, reference to DIN standards), other product descriptions or

documents – including in electronic form – to which we reserve all ownership rights and copyrights.

- 2.2 The ordering of Goods by the Buyer is deemed a binding offer of a contract. Unless stated otherwise in the order, we are entitled to accept this offer of a contract within 2 (two) weeks of receiving such.
- 2.3 Acceptance can be declared either in writing (e.g. order confirmation) or by delivering the Goods to the Buyer.

§ 3

Delivery time and delay in delivery

- 3.1 The delivery time is agreed individually or specified by us upon acceptance of the order. If this is not the case, the delivery time is approximately 12 (twelve) weeks after conclusion of the contract.
- 3.2 If we are unable to meet binding delivery dates for reasons for which we are not responsible (unavailability of performance), we will inform the Buyer of this without undue delay and review the expected new delivery date and inform the Buyer of this promptly, normally within 2 (two) business days. If performance is not available by the new delivery date either, we are entitled to rescind the contract completely or partially; we will reimburse any consideration already provided by the Buyer without undue delay. Unavailability of performance in this sense are particular deemed to be cases of force majeure and other events that were not foreseeable at the time the contract was concluded (e.g. strikes, lawful lockouts, operational disruptions of all kinds, difficulty in procuring materials or energy, transport delays, lack of manpower, energy or raw materials, difficulties in obtaining the necessary official permits, official measures or the failure of suppliers to supply, supply correctly or supply in due time or the if the Buyer does not provide the cooperation required of it or does not do so in due time) for which we are not responsible. In the event that the Buyer is responsible for the unavailability of performance, Section 4.4 applies.
- 3.3 The requirements for default of delivery are determined by the applicable statutory provisions, however, a written warning notice from the Buyer is always required. If we default on delivery, the Buyer can demand lump-sum compensation of the default damage it has incurred. We will agree on the relevant lump-sum compensation with the Buyer in good faith, taking the individual case into account.
- 3.4 The Buyer's rights in accordance with Section 7 of these Terms and our statutory rights, in particular in the event of any exclusion of the obligation to provide performance (e.g. due the impossibility or unreasonableness of the performance and/or subsequent performance), remain unaffected.

§ 4

Delivery, passing of risk, acceptance, delayed acceptance

- 4.1 Unless stated otherwise in our order confirmation or individual agreements, we deliver EWX (ex works) (Schwabacher Str. 10, 01655 Klipphausen) Incoterms 2010, which is also the place of performance for the delivery and any subsequent performance. At the

request and expense of the Buyer, the Goods will be shipped to a different destination (sales shipment). Unless agreed otherwise, we are entitled to determine the type of shipment (in particular transport company, shipment route, packaging) ourselves.

- 4.2 We are entitled to make partial deliveries within the scope of delivery periods and with what is reasonable for the Buyer.
- 4.3 The risk of accidental loss and accidental deterioration of the Goods passes to the Buyer at the latest upon handover. In the case of a sales shipment, however, the risk of accidental loss and accidental deterioration of the Goods, as well as the risk of delay already passes to the Buyer upon delivery of the Goods to the forwarding agent, freight forwarder or any other person or institution designated to execute the delivery. If the shipment is delayed for reasons for which we are not responsible, the risk passes to the Buyer at the time of notifications of readiness for shipment. If acceptance of Goods has been agreed, this is authoritative for the passing of risk. The statutory provisions of legislation governing contracts for work also otherwise apply to any agreed acceptance of Goods. Handover or acceptance of Goods is deemed to have taken place if the Buyer is in default of acceptance.
- 4.4 If the Buyer defaults on acceptance, fails to meet its obligations to cooperate or our delivery is delayed for other reasons for which the Buyer is responsible, we are entitled to demand compensation of the damage resulting from this including additional expenses (e.g. warehouse costs). We charge lump-sum compensation for this in an amount of 1.0% of the net price (delivery value) for each full calendar week of default, but overall a maximum of 10% of the delivery value of the goods accepted late, beginning on the delivery dates – in the absence of a delivery date – upon notification that the Goods are ready for shipment.

The evidence of higher damage and our statutory claims (in particular reimbursement of additional expenses, including warehouse costs, appropriate compensation, termination) remain unaffected; the lump-sum compensation is, however, to be offset against further monetary claims. The Buyer remains at liberty to evidence that we have not incurred any damage at all or only significantly less damage than the above lump-sum.

§ 5

Prices and payment terms

- 5.1 Unless agreed otherwise in the individual case, our prices, ex works in Klipphausen plus statutory VAT, which are valid in each case at the time the contract is concluded apply.
- 5.2 In the case of sales shipments (Section 4.1 of these Terms), the Buyer bears transport costs ex warehouse and the costs of any transport insurance which may be desired by the Buyer. Any customs duties, fees, taxes and other public charges are borne by the Buyer.
- 5.3 The purchase price is due and payable within 14 days of invoicing and delivery or acceptance of the Goods. We are, however, even in an ongoing business relationship,

entitled at any time to only carry out a delivery completely or partially against advance payment. We declare this reservation at the latest upon order confirmation.

- 5.4 The Buyer make payments by bank transfer in euros to our bank account specified in the invoice.
- 5.5 The Buyer is in default upon expiry of the above payment deadline. Interest at the statutory default interest rate applicable in each case is to be charged on the purchase price during default. We reserve the right to assert further default damage. Our claim against merchants for commercial interest on maturity (Sec. 353 German Commercial Code (*Handelsgesetzbuch* – HGB) remains unaffected.
- 5.6 The Buyer has set-off or retention rights only to the extent that its claim has been finally established by a court of law, is undisputed or is based on the same contractual relationship.
- 5.7 If it becomes apparent after conclusion of the contract (e.g. due to an application for the commencement of insolvency proceedings) that our claim to the purchase price is jeopardised due to the Buyer's inability to perform, we are entitled in accordance with statutory regulations to refuse performance and – if applicable after setting a deadline – to rescind the contract (Sec. 321 BGB). In the case of contracts pertaining to the manufacture of non-fungible items (individual manufacture), we can declare rescission immediately; the statutory regulations with respect to dispensing with the setting of deadline remain in all cases unaffected.

§ 6 Reservation of title

- 6.1 We reserve title to the Goods sold until full payment of all our current and future claims under the purchase contract and any ongoing business relationship (secured claims).
- 6.2 The Buyer must treat the reserved title Goods with care and carry out any necessary maintenance and inspection work in due time and at its own expense. The reserved title Goods must be stored separately from other goods and insured to the usual extent at replacement value against property damage (in particular fire, water and theft).
- 6.3 The Goods subject to reservation of title may not until full payment of the secured claims be pledged or transferred by way of security to third parties. The Buyer must inform us in writing without undue delay if an application for the commencement of insolvency proceedings has been filed or third parties lay claim to the Goods belonging to us (e.g. by attachment).
- 6.4 If the Buyer acts in breach of contract, in particular fails to pay the due purchase price, we are entitled in accordance with the applicable statutory regulations to rescind the contract and/or to demand return of the Goods on the basis of reservation of title. The demand for return of the Goods does not at the same time include any declaration of rescission; rather, we are entitled to only demand return of the Goods and to reserve the right to rescind the contract. If the Buyer does not pay the due purchase price, we can only assert these rights if we have previously set the Buyer an appropriate deadline

without success or such setting of a deadline can be dispensed with in accordance with the applicable statutory regulations.

6.5 Until revocation in accordance with Section 6.5.3 below, the Buyer is entitled to resell and/or process the Goods subject to reservation of title during the normal course of business. In this case, the following provisions apply in addition:

6.5.1 The reservation of title also covers the products at their full value which are created as a result of the processing, mixing or combining of our Goods, whereby we are deemed the manufacturer. If in the event of processing, mixing or combining with third-party goods, their ownership rights remain in place, we acquire co-ownership in the ratio of the invoice values in the processed, mixed or combined goods. The same otherwise applies to the product created as for the Goods delivered subject to reservation of title.

6.5.2 The Buyer hereby as security already assigns to us the claims arising from the resale of the Goods or the product in total or in the amount of any co-ownership share we may have in accordance with the preceding paragraph. We accept this assignment. The Buyer's obligations specified in Section 6.2 also apply with respect to the assigned claims.

6.5.3 The Buyer, besides us, remains authorised to collect the claim. We agree not to collect the claim as long as the Buyer meets its payment obligations to us, no defect in its ability to perform exists and we do not assert reservation of title by exercising a right in accordance with Section 6.3. If this, however, is the case, we can demand that the Buyer discloses the assigned claims and their debtors to us, provides all information required to collect the claims, hands over the associated documents and informs the debtors (third parties) about the assignment. In this case we are also entitled to revoke the Buyer's authorisation to resell and process the Goods subject to reservation of title.

6.5.4 If the realisable value of all collateral exceeds our claims by more than 10%, we will at the request of the Buyer release the collateral of our choice.

§ 7

Buyer's claims for defects

7.1 Unless provided for otherwise below, the applicable statutory provisions apply to the Buyer's rights in the event of material defects and defects in title (including incorrect or short delivery, as well as improper installation). The statutory special regulations governing recourse against suppliers in accordance with Sections 478, 445a et seq. BGB in the individual case of a final delivery of the Goods to a consumer remain unaffected in all cases. Claims based on recourse against suppliers are, however, excluded if the defective Goods have been processed by the Buyer or another business in the supply chain, e.g. by installing it into another product.

7.2 The basis of our liability for defects is above all the agreement on the quality of the Goods. The product specifications described as such (of the manufacturer as well)

which are provided to the Buyer before its order or have been included in the contract in the same way as these Terms are deemed agreements on the quality of the Goods.

- 7.3 If the quality was not agreed, it is to be assessed in accordance with statutory regulations whether a defect exists or not (Sec. 434 (1) sentences 2 and 3 BGB). We do not, however, assume any liability for public statements of the manufacturer or other third parties (e.g. advertising claims), unless the Buyer has informed us that these statements of the manufacturer or third party are decisive for it for the purchase. Insofar as the assessment of the defectiveness depends on compliance with public-law requirements including product or market-related obligations, only the relevant regulations applicable to the marketability of the Goods within the Federal Republic of Germany apply as a standard. Deviating requirements abroad – including the product's destination country – only apply if this has been expressly agreed in the individual case.
- 7.4 The Buyer's claims for defects require that it has met its statutory inspection and defect notification obligations (Sections 377, 381 HGB). The Buyer or a third party designated by it must carefully inspect the Goods without undue delay after delivery. With respect to obvious defects or other defects which would have been recognisable in a careful inspection without undue delay after delivery (including incorrect and short deliveries), the Goods are deemed to have been approved by the Buyer if we do not receive written notification of defects within 7 (seven) business days of delivery. With regard to other defects, the Goods are deemed to have been approved by the Buyer if we do not received notification of defects within 7 (seven) business days of the time at which the defect became apparent; however, if the defect was already apparent at an earlier point in time during normal use, this earlier time is decisive for the commencement of the period for giving notification of defects.
- 7.5 If the item delivered is defective, we can first of all choose whether we provide subsequent performance by rectifying the defect (repair) or by delivering an item free of defects (replacement delivery). Our right to refuse subsequent performance subject to the applicable statutory requirements remains unaffected.
- 7.6 We are entitled to make the subsequent performance owed dependent on payment of the due purchase price by the Buyer. The Buyer is, however, entitled to withhold a part of the purchase price which is appropriate in relation to the defect.
- 7.7 The Buyer has to give us the time and opportunity required for the subsequent performance owed, in particular to give us access to the Goods or hand over the Goods objected to for inspection purposes. In the event of replacement delivery, the Buyer must return the defective item in accordance with the applicable statutory provisions. Subsequent performance does not include either the dismantling of the defective item or the renewed installation if we were not originally obliged to install the item.
- 7.8 We reimburse the expenses required for the purposes of inspection and subsequent performance, in particular transport, travel, work and material costs (and dismantling and installation costs) in accordance with statutory regulations if a defect actually exists. The Buyer is obliged to reimburse us the costs due to any unjustified request for the rectification of a defect (in particular inspection and transport costs).

- 7.9 In urgent cases, e.g. in the event of a risk to operational safety or to avert disproportionate damage, the Buyer has the right to rectify the defect itself and to demand the reimbursement of the expenses objectively required for this. We are to be informed about any such rectification of the defect by the Buyer without undue delay, if possible in advance. The Buyer's right to rectify the defect does not exist if we would have been entitled to refuse corresponding subsequent performance in accordance with the applicable statutory regulations.
- 7.10 If the subsequent performance is unsuccessful or if a deadline for subsequent performance to be set by the Buyer expires without any result or can be dispensed with in accordance with the applicable statutory regulations, the Buyer can rescind the purchase agreement or reduce the purchase price. No right of rescission exists, however, in the case of insignificant defects.
- 7.11 Any delivery of used items agreed with the Buyer in individual cases takes place subject to the exclusion of any claims for defects.
- 7.12 The Buyer's claims to damages or the reimbursement of futile expenses also exist for defects only in accordance with Section 8 and are otherwise excluded.

§ 8 Other liability

- 8.1 Unless these Terms including the following provisions state otherwise, we are liable in the event of any breach of contractual and non-contractual obligations in accordance with the applicable statutory provisions.
- 8.2 We are liable for damages – based on whatever legal grounds – in the event of fault caused by wilful intent or gross negligence. Unless the applicable statutory regulations provide for a lesser liability standard (e.g. for due care in one's own matters), we are in the event of simple negligence only liable
- 8.2.1 for damage based on injury to life, limb or health,
- 8.2.2 for damage based on the not insignificant breach of a material contractual obligation (obligation whose fulfilment makes the proper performance of the contract possible in the first place at all and on compliance with which the contractual party regularly relies and may regularly rely); in this case, however, our liability is limited to the reimbursement of foreseeable damage which typically occurs. The foreseeable, typically occurring damage will in no case exceed the current coverage of our liability insurance regarding any damage event. We will inform the Buyer of the current amount of cover at any time and free of charge at its request.
- 8.3 The limitations of liability resulting from Section 8.2 also apply for breaches of obligations by or in favour of persons for whose fault we are responsible in accordance with the applicable statutory regulations. They do not apply if we maliciously do not disclose a defect or have assumed a guarantee for the quality of the Goods and for

claims of the Buyer in accordance with the German Product Liability Act (*Produkthaftungsgesetz – ProdHaftG*).

- 8.4 The Buyer can only rescind or terminate the contract due to any breach of an obligation other than a defect if we are responsible for the breach of such obligation. Any free right of the Buyer to terminate the contract (in particular in accordance with Sections 651 and 649 BGB) is excluded. The statutory requirements and legal consequences otherwise apply.

§ 9 Product Liability

- 9.1 Our liability to third parties for defective products is governed by the statutory provisions. The Buyer may derive claims against from this, in particular within the scope of a joint and several debtor settlement, at most to the extent that we ourselves are liable to third parties and have culpably caused, or contributed to causing, the defect.
- 9.2 If the Buyer is obliged to carry out a measure to avert risk (e.g. a product recall) due to a defective product delivered to it by us, we will participate in the costs demonstrably incurred by the Buyer in accordance with the statutory provisions, but at most to the extent that:
- 9.2.1 we ourselves are obliged to avert risk and have culpably caused, or contributed to causing, the product defect;
- 9.2.2 the Buyer has informed us in advance of the type and scope of the measure to avert the risk, including our share in this risk – if possible and reasonable – and has given us the opportunity to comment; and
- 9.2.3 the measure to avert risk carried out was legally and actually necessary, taking all the circumstances of the individual case into account.-
- 9.3 If claims are asserted against us by third parties on account of a defective product delivered by us to the Buyer, the Buyer will indemnify us against these claims insofar as the Buyer is solely or predominantly responsible in the internal relationship between the parties for the defect triggering the liability, in particular on account of defective inspection and/or further processing of the Goods, taking into account any agreements which may exist between the parties for quality assurance or any notices and instructions issued by us.

§ 10 Deviating/supplementary regulations for the provision of work services

If we have agreed in individual cases to provide work services (e.g. maintenance or repair work, assembly services, commissioning), the provisions of these Terms apply accordingly unless otherwise provided for in the following provisions. This does not apply to construction contracts and contracts for the provision of planning or supervision services for a building (in particular architects' and engineers' contracts), to which the statutory provisions apply exclusively.

- 10.1 Changes to the content and scope of the agreed services require a written agreement, in particular regarding the changes in the time schedule that will occur with the requested change and, if applicable, any additional remuneration that will result due to the change. If no agreement is reached, we are entitled to reject the change request. This applies in particular even if our company is not equipped for the kind of change requested.
- 10.2 The Buyer is obliged to cooperate to the extent necessary for the proper provision of the work services. The Buyer will in particular, to the extent required for the performance or our obligations:
- 10.2.1 provide unhindered access to the place where the work is to be performed;
 - 10.2.2 provide all documents, data, specifications, technical documentation including illustrations, plans, drawings, calculations, execution instructions and other information;
 - 10.2.3 provide the necessary official certificates or approvals;
 - 10.2.4 provide the media such as water, energy, heating and air conditioning necessary for the performance of the services, unless otherwise agreed upon individually.

We will treat the locations, information and media provided to us with the due care to be exercised by a prudent businessperson.

- 10.3 The Buyer is obliged to accept the work that has been performed in accordance with the contract. The statutory provisions shall apply to the acceptance.
- 10.4 If the Buyer exercises its right of termination in accordance with Sec. 648 sentence 1 BGB, we are entitled to request 10% of the agreed net remuneration for the part of the work not yet performed as a lump-sum payment.

Proof of a higher claim and our statutory claims (in particular for damages) remain unaffected; the lump-sum payment is, however, to be set off against further monetary claims. The Buyer remains entitled to prove that we are not entitled to any amount at all or only to a significantly lower amount than the above lump sum.

- 10.5 Notwithstanding Sec. 634a (1) No. 1 BGB, the general limitation period for claims arising from material defects and defects in title with respect to any work whose success consists in the manufacture, maintenance or modification of an item or in the provision of planning or monitoring services for it is one year commencing upon acceptance and, notwithstanding Section 634a (1) No. 3 BGB, one year commencing when the statutory limitation period starts. This does not affect special statutory regulations on the statute of limitations (e.g. Sec. 634a (3), Sec. 202 (1) BGB). Section 12.4 applies analogously.

§ 11

Intellectual property

- 11.1 The sale of the Goods does not grant or transfer to the Buyer any licences, rights of use or other authorisations regarding intellectual property rights, in particular copyrights, design rights, trademark rights and labelling rights of the Seller, which go beyond the intended use of the Goods. The exhaustion of intellectual property rights as well as the authorisations of the Buyer according to Sec. 23 German Trademark Act (*Markengesetz* – MarkenG), Article 6(1) of Directive 89/104/EEC or comparable mandatory legal principles remain unaffected.
- 11.2 The Buyer will inform us without undue delay in writing, provide all information necessary for legal defence and provide other cooperation if it becomes aware of or suspects any – impending or actual – infringement of intellectual property rights in the above sense by third parties.
- 11.3 If a third party asserts intellectual property rights to which it is entitled in respect of the sold Goods against the Buyer or companies affiliated with it, the above obligation to provide information and cooperation for the purpose of examining and defending against the alleged claims applies accordingly. In addition, the Buyer will, upon request, allow us to conduct the legal and extra-judicial legal dispute with the third party independently, including settlement negotiations, settlement and acknowledgement; the Buyer will support us in this respect in a reasonable manner against reimbursement of the costs incurred as a result.
- 11.4 If it is established that the Goods are subject to intellectual property rights of third parties which conflict with or impair the intended use of the Goods by the Buyer, this is to be deemed a defect in title. Within the scope of subsequent performance, we are entitled in particular to remedy the defect by obtaining rights of use in favour of the Buyer, by modifying the Goods or by replacing them with Goods free of defects in title.

§ 12

Limitation period

- 12.1 Notwithstanding Sec. 438 (1) No. 3 BGB, the general limitation period for claims due to material defects or defects in title is 1 (one) year commencing upon delivery. If acceptance of Goods has been agreed, the limitation period commences upon acceptance.
- 12.2 If the Goods are used for a building in accordance with their normal use and have caused its defectiveness or if the Goods themselves are a building, the limitation period is 5 (five) years from the date of delivery. Notwithstanding the above, for parts of mechanical and electrotechnical/electronic systems where maintenance has an influence on safety and functionality, the limitation period for claims for defects is 2 (two) years for these system parts if the Buyer has decided not to assign the maintenance to us for the duration of the limitation period.
- 12.3 Additional special statutory regulations regarding limitation periods (e.g. Sec. 438 (1) No. 1, (3), Sections 444 and 445b BGB) also remain unaffected by the above provisions.

12.4 The above limitation periods under the law governing the sale of goods also apply to contractual and non-contractual claims of the Buyer for damages, which are based on any defect in the Goods, unless the application of the normal statutory limitation period (Sections 195 and 199 BGB) would in the individual case lead to a shorter limitation period. Claims of the Buyer for damages in accordance with Section 8.2 sentence 1 and Section 8.2.1 and in accordance with German Product Liability Act (*Produkthaftungsgesetz* – ProdHaftG), however, exclusively become statute-barred in accordance with the statutory limitation periods.

§ 13 **Choice of law and jurisdiction**

13.1 These Terms and the contractual relationship between us and the Buyer 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 Buyer 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 place of business in 01665 Klipphausen, Germany has the exclusive – and also international – jurisdiction for all disputes arising from the contractual relationship. The same applies if the Buyer is a business in the meaning of Sec. 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 Buyer. Statutory regulations which take precedence, in particular with respect to exclusive jurisdiction, remain unaffected.

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