

General Conditions of Purchas for f-tronic GmbH

§ 1 Application

(1) All deliveries, services and offers of our suppliers are made exclusively on the basis of these general conditions of purchase. These are part of all contracts we conclude with our suppliers about the supplies or services they offer. They also apply to all future deliveries, services or offers to the client, even if they are not separately agreed again. The general conditions of purchase only apply if the seller is an entrepreneur (§ 14 BGB), a legal entity under public law or a public-law special fund.

(2) The general conditions of purchase apply in particular to contracts for the sale and/or delivery of goods ("goods"), irrespective of whether the seller manufactures the goods itself or purchases them from suppliers (§§ 433, 651 BGB). Unless otherwise agreed, the general conditions of purchase in the version valid at the time of the order of the buyer or at least in the version communicated to it in text form as a framework agreement also apply to similar future contracts, without us having to refer to them again in each individual case.

(3) In individual cases, individual agreements with the seller (including ancillary agreements, additions and changes) have priority over these general conditions of purchase. For the content of such agreements, subject to contrary evidence, a written contract or our written confirmation shall prevail.

(4) Legally relevant statements and advertisements of the seller in relation to the contract (e.g. setting of a deadline, reminder, withdrawal) shall be in writing, i.e. in written or textual form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, especially in cases of doubt about the legitimacy of the declarant, remain unaffected.

(5) Terms and conditions of our suppliers or third parties do not apply, even if we do not separately object to their validity in individual cases. Even if we refer to a letter containing or referring to terms and conditions of the supplier or any third party, this does not constitute acceptance of the terms and conditions.

§ 2 Orders and contracts

(1) Unless our order explicitly contains a binding period, we shall be bound by it one week after the date of the offer. Decisive for the timely acceptance is the receipt of the declaration of acceptance with us.

(2) We are entitled to change the time and place of delivery as well as the type of packaging at any time by giving written notice at least 14 calendar days before the agreed delivery date. The same applies to changes in product specifications, insofar as these can be implemented within the scope of the normal production process of the supplier without significant additional expenditure, in which case the notification period according to the above provision is at least 7 calendar days. If such changes result in delivery delays that cannot be avoided with reasonable efforts in the normal production and business operations of the supplier, the originally agreed delivery date shall be postponed accordingly. The supplier shall notify us in writing of the additional costs or delivery delays to be expected from it in due time prior to the delivery date, but at least within 3 working days of receipt of our notification according to sentence 1.

(3) We are entitled to terminate the contract at any time by giving a written statement stating the reason, if we can no longer use the ordered products in our business due to circumstances occurring after conclusion of the contract. In this case, we shall reimburse the supplier for the partial service provided by it.

§ 3 Prices, terms of payment, billing information

(1) The price stated in the order is binding. All prices include statutory VAT, unless otherwise stated. For price adjustments in our favor no prior agreement is necessary.

(2) Unless otherwise agreed in writing, the price includes all services and ancillary services provided by the seller (e.g., assembly, installation) and any ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance).

(3) If, according to the agreement, the price does not include the packaging, and the remuneration for the packaging – not just used on loan – is not expressly determined, this shall be charged at the demonstrable cost price. At our request, the supplier has to take back the packaging at its expense.

(4) Unless otherwise agreed, we shall pay the purchase price within 14 days from the delivery of the goods and receipt of invoice with 3% discount or within 30 days net. For the timeliness of the payments owed by us, the receipt of our transfer order at our bank is sufficient. We are not responsible for delays of the banks involved in the payment transaction.

(5) All order confirmations, delivery papers and invoices must state our order number, article number, delivery quantity and delivery address. Should one or more of these details be omitted and the processing be delayed by us as part of our normal course of business, the payment periods referred to in paragraph 4 shall be extended by the period of the delay.

(6) We do not owe any maturity interest. In the event of default of payment, we owe default interest in the amount of five percentage points above the base lending rate in accordance with § 247 BGB.

(7) Rights of set-off and retention as well as the plea of the non-fulfilled contract are entitled to us to the legal extent. In particular, we are entitled to withhold payments due as long as we still have claims from incomplete or defective services against the seller.

(8) The seller has a right of set-off or retention only on the basis of legally established or undisputed counterclaims.

§ 4 Delivery time and delivery delay

(1) The delivery time specified in the order (delivery date or period) is binding unless otherwise agreed. Premature deliveries are not permitted or must be clarified with us beforehand.

(2) The supplier is obliged to inform us immediately in writing if circumstances occur or become apparent, according to which the delivery time cannot be met.

(3) If the day on which the delivery has to be effected at the latest is determined on the basis of the contract, the supplier shall be in default at the end of this day without any need for a reminder from us.

In the event of a delay in delivery, we are entitled without restriction to the statutory claims, including the right of withdrawal and the claim for damages instead of performance after fruitless expiry of a reasonable period of grace.

We are entitled to demand a contractual penalty in the amount of 0.5%, maximum 5%, of the respective net order value for delivery delays after prior written notice to the supplier for each commenced week of delay in delivery. The contractual penalty is to be offset against the default damage to be compensated by the supplier. We reserve the proof that higher damage has occurred. The seller reserves the right to prove that no or only a significantly lower damage has occurred.

§ 5 Performance, delivery, transfer of risk, default of acceptance

(1) The seller is not entitled, without our prior written consent, to have the service owed by it performed by third parties (such as subcontractors). The seller bears the procurement risk for its services, unless otherwise agreed in an individual case (for example, limitation to stock).

(2) The delivery takes place within Germany "free domicile" at the place specified in the order. If the place of destination has not been specified and nothing else has been agreed, the delivery must be made to our registered office in Saarbruecken. The respective place of destination is also the place of performance for the delivery and any subsequent performance (delivery debt).

(3) The delivery shall be accompanied by a delivery note specifying the date (issue and shipping), content of the delivery (item number and number) and our order code (date and number). If the delivery note is missing or incomplete, we are not responsible for the resulting delays in processing and payment. Separate from the delivery note, we have to send you a corresponding shipping notice with the same content.

(4) The risk of accidental loss and accidental deterioration of the thing passes to us at the place of performance. Insofar as an acceptance has been agreed, this is decisive for the transfer of risk. Incidentally, in the case of acceptance, the statutory provisions laws for contractual work apply accordingly. The transfer or acceptance is the same if we are in default of acceptance.

(5) The statutory provisions apply to the occurrence of our default of acceptance. However, the seller must explicitly offer us its performance even if a specific or determinable calendar time has been agreed for an action or participation on our part (for example, provision of material). If we are in default of acceptance, then the seller may demand compensation of its additional expenses in accordance with the statutory provisions (§ 304 BGB). If the contract relates to an item to be produced by the seller (one-off production), which is untenable, the seller is entitled to further rights only if we are obliged to cooperate and are responsible for the failure to cooperate.

§ 6 Confidentiality and retention of title

(1) We reserve the right of ownership and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents are to be used exclusively for the contractual service and to be returned to us after completion of the contract. The documents must be kept confidential from third parties, even after the contract has ended. The confidentiality obligation shall only expire if and insofar as the knowledge contained in the provided documents has become generally known.

(2) The above provision shall apply mutatis mutandis to items and materials (for example, software, finished and semi-finished products) and to tools, templates, samples and other items which we provide to the seller for manufacture. Such items shall be kept separate at the expense of the seller and adequately insured against destruction and loss unless they are processed.

(3) A processing, mixing or connection (further processing) of provided items by the seller is made for us. The same applies to further processing of the delivered goods by us, so that we are considered to be the manufacturer and acquire ownership of the product at the latest with further processing in accordance with the statutory provisions.

(4) The transfer of the goods to us must occur unconditionally and without consideration for the payment of the price. If, however, in individual cases we accept a conditional sale of the seller due to the purchase price payment, the retention of title of the seller expires at the latest upon payment of the purchase price for the delivered goods. In the ordinary course of business, we remain authorized to resell the goods prior to payment of the purchase price, subject to advance assignment of the resulting claim (in the alternative, the validity of the simple retention of title extended to resale). In any case, this excludes all other forms of retention of title, in particular extended, transferred retention of title and extended retention of title to further processing.

§ 7 Defective delivery

(1) For our rights in case of material and legal defects of the goods (including wrong and short delivery and improper installation, faulty assembly, usage or operating instructions) and other breaches of duty by the seller, the statutory provisions, apply unless otherwise stated below.

(2) In accordance with the statutory provisions, the seller is liable in particular for ensuring that the goods have the agreed quality at the time of the transfer of risk. In any case, those product descriptions which are the subject of the respective contract or are included in the contract in the same way as these general conditions of purchase, in particular by designation or reference in our order, are deemed to be an agreement on the condition. It makes no difference whether the product description comes from us, the seller or the manufacturer.

(3) Notwithstanding § 442 (1) sentence 2 BGB, we are entitled to claims for defects without restriction even if the defect at the time of conclusion of the contract as a result of gross negligence has remained unknown to us.

(4) The statutory provisions (§§ 377, 381 HGB) apply to the obligation to inspect and to give notice of defects with the following proviso: Our obligation to inspect is limited to defects which become evident during our inspection of incoming goods under external inspection including the delivery documents (for example transport damage, incorrect or short delivery) or can be identified during our quality control by sampling. Insofar as acceptance has been agreed, there is no duty to inspect. Moreover, it depends on the extent to which an inspection, taking into account the circumstances of the individual case in the ordinary course of business, is feasible. Our obligation to notify about defects discovered later remains unaffected. Notwithstanding our obligation to inspect, our complaint (notice of defect) shall in any case be deemed prompt and timely if it is sent within 7 working days from discovery or, in the case of obvious defects, from delivery.

(5) Supplementary performance also includes the removal of defective goods and reinstallation, provided that the goods have been installed in accordance with their nature and intended use or attached to another object. Our statutory claim for compensation for corresponding expenses remains unaffected. The seller bears the expenses necessary for the purpose of the examination and supplementary performance even if it turns out that in fact there was no defect. Our liability for damages in case of unjustified removal of defects remains unaffected; however, we are liable only if we have recognized or grossly negligent did not recognize that there was no defect.

(6) Without prejudice to our statutory rights and the regulations in paragraph 5, the following applies: If the seller does not comply with its obligation to supplementary performance – at our discretion by rectifying the defect (rectification) or by delivering a defect-free item (replacement) – within a reasonable period set by us, we can remedy the defect ourselves and require that the seller cover the necessary expenses or provide a corresponding advance.

If the supplementary performance by the seller has failed or is unreasonable for us (e.g. because of special urgency, endangering the operational safety or impending occurrence of disproportionate damage), no setting of a deadline is required; we will inform the seller immediately, if possible beforehand, of such circumstances.

(7) In addition, we are entitled in case of a material or legal defect according to the statutory provisions to reduce the purchase price or to withdraw from the contract. In addition, we are entitled to damages and reimbursement of expenses according to the legal regulations.

§ 8 Supplier recourse

(1) Our statutory claims for recourse within a supply chain (supplier recourse in accordance with §§ 445a, 445b, 478 BGB) are unlimited for us in addition to the claims for defects. In particular, we are entitled to demand exactly the type of supplementary performance (repair or replacement) from the seller, which we owe to our buyer in individual cases. Our legal option (§ 439 (1) BGB) is not limited by this.

(2) Before we acknowledge or fulfill a claim asserted by our customer (including reimbursement of expenses in accordance with §§ 445a Abs. 1, 439 (2) and (3) BGB), we shall inform the seller and ask for a written statement with a brief statement of the facts. If a substantiated statement is not made within a reasonable period of time and if no mutually agreed solution is brought about, the defect claim actually granted by us shall be deemed due to our customer. The seller is responsible in this case for providing proof otherwise.

(3) Our supplier recourse claims shall also apply if the defective goods have been further processed by us or another contractor, e.g. by incorporation into another product.

§ 9 Product / producer liability

(1) The supplier is responsible for all claims asserted by third parties for personal injury or property damage, which are due to a faulty product delivered by it, and is obliged to indemnify us from the resulting liability. If we are obliged to carry out a product recall against third parties due to a fault of a product delivered by the supplier, the supplier shall bear all costs associated with the recall.

(2) The supplier is obliged to maintain product liability insurance at its own expense with a coverage of at least EUR 1,000,000, which, unless otherwise agreed in individual cases, need not cover the recall risk or any criminal or similar damages. The supplier shall send us a copy of the liability policy at any time upon request.

§ 10 Property rights

(1) The supplier warrants that in connection with its delivery no third-party property rights in countries of the European Union, North America or other countries in which it manufactures or has manufactured the products are infringed.

(2) The supplier is obligated to indemnify us from all claims that third parties make against us for the infringement of industrial property rights referred to in paragraph 1 and to reimburse us for all necessary expenses in connection with such claims. This entitlement is independent of any fault of the supplier.

§ 11 Spare parts

(1) The supplier is obliged to provide spare parts for the products delivered to us for a period of at least 2 years after delivery.

(2) If the supplier intends to discontinue the production of spare parts for the products delivered to us, it shall inform us immediately after the decision on the discontinuation. This decision must, subject to paragraph 1, be made at least 6 months before the cessation of production.

§ 12 Confidentiality

(1) The supplier is obliged to keep confidential the conditions of the order as well as all information and documents provided for this purpose (with the exception of publicly available information) for a period of 5 years after the conclusion of the contract and only to use such materials to execute the order. The supplier shall promptly return such materials to us after completing requests or processing orders.

(2) Without our prior written consent, the supplier may not refer to the business relationship in advertising material, brochures, etc. and may not issue delivery items manufactured for us.

(3) The supplier shall oblige its subcontractors in accordance with this § 12.

§ 13 Assignment

The supplier is not entitled to assign its claims from the contractual relationship to third parties. This does not apply, as far as it concerns monetary claims.

§ 14 Statute of limitations

(1) The reciprocal claims of the contracting parties expire in accordance with the statutory provisions, unless otherwise stated below.

(2) Notwithstanding § 438 (1) (3) BGB, the general limitation period for claims for defects is 3 years from the passing of risk. Insofar as acceptance has been agreed, the limitation period begins with the acceptance. Accordingly, the 3-year limitation period shall also apply to claims arising from defects in title, whereby the statutory limitation period for claims in rem for third parties (§ 438 (1) (1) BGB) remains unaffected; In any case, claims arising from defects of title shall in no case become statute-barred as long as the third party can still assert the right against us - in particular due to a limitation period.

(3) The limitation periods of purchasing law including the above extension apply – to the legal extent – for all contractual claims for defects. Insofar as we are entitled to non-contractual claims for damages due to a defect, the statutory limitation period applies (§§ 195, 199 BGB) if the application of the limitation periods of purchasing law in individual cases does not lead to a longer limitation period.

§ 15 Place of performance, jurisdiction, applicable law

(1) If the seller is a merchant in accordance with the Commercial Code, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from the contractual relationship is our place of business in Saarbruecken. However, in all cases, we are also entitled to bring action at the place of performance of the delivery obligation, in accordance with these general conditions of purchase or an individual agreement with priority, or at the general place of jurisdiction of the seller. Priority laws, especially exclusive jurisdictions, remain unaffected.

(2) The contracts concluded between us and the supplier are subject to the law of the Federal Republic of Germany to the exclusion of the Convention on the International Sale of Goods (UN Convention on the International Sale of Goods).

As of: 2018-10

Legal notice:

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