

# General Terms of Delivery

## 1. General

- 1.1 Our deliveries and services shall be exclusively made and rendered in accordance with these Terms. Customer's terms and any divergent terms shall only apply if we acknowledge them in writing. Neither failure on our part to respond to terms which have been sent to us, nor our discharging of an order shall be deemed to be acknowledgement. These Terms shall also apply to all future business transactions with Customer.
- 1.2 Customer acknowledges these Terms on accepting our deliveries or services at the latest.
- 1.3 Our General Terms of Delivery shall only apply to companies as defined in German Civil Code [Bürgerliches Gesetzbuch - BGB] s. 310 (1).

## 2. Quotations

- 2.1 Our quotations are without obligation. We shall only be bound by Customer's orders once we have confirmed them in writing. Our written confirmation of order shall decide the content and scope of the contract. All agreements reached between Customer and us for the purpose of performing the contract are laid down in writing in the contract. The pictures, drawings and specifications given in our pricelists, brochures, estimates and quotations, in particular weights and measures and other technical data, and the DIN, VDE or other internal or external standards and samples to which reference is made, shall only describe the subject-matter of the contract, and shall not constitute either guarantees or warranted characteristics.
- 2.2 We are entitled to make alterations to the content of the contract if such alterations are based on technical developments or improvements, provided they do not make any substantial difference to the content of the contract.
- 2.3 Any advice and comments we give are to the best of our knowledge, and shall be without obligation notwithstanding the form in which they are given.
- 2.4 In the case of customised orders, we reserve the right to make reasonable excess or short deliveries.
- 2.5 Customer shall assume responsibility for the tasks incumbent upon it, and for the parts to be provided by it.

## 3. Orders

Delivery contracts (orders and acceptance), contracts for deliveries on call, and all and any amendments or supplements thereto must be done in writing. They may also be made electronically or by way of data transmission. Our written confirmation of order shall be decisive for the performance of contracts for deliveries on call.

## 4. Deliveries

- 4.1 Delivery periods and deadlines are generally given in writing, and shall be without obligation at all times.
- 4.2 Delivery periods shall commence on the date of our confirmation of order, and shall apply solely on condition that all the details for discharging the respective order have been clarified in advance. Compliance with our delivery obligation shall also be contingent upon all Customer's obligations being duly performed on time. To this extent, we expressly reserve the right to plead non-performance. The delivery deadline shall be deemed met if the object of the delivery has left our factory before the expiry of such deadline, or if notice that it is ready for dispatch has been given in time.
- 4.3 If Customer defaults in accepting performance, or culpably violates other obligations to cooperate, then we shall be entitled to demand compensation for any losses thus sustained, including any extra expenses. We reserve the right to assert further claims. Insofar as these requirements are met, the risk of the goods being accidentally destroyed or of their accidental deterioration shall pass to Customer at the time when it defaulted in accepting performance or making payment.
- 4.4 We shall be liable in accordance with statutory regulations, insofar as the delay in delivery is due to a deliberate or grossly negligent breach of contract for which we are responsible. Fault on the part of our agents or those assisting us with the performance of our obligations shall be attributed to us. Insofar as the delay in delivery is not due to a deliberate breach of contract for which we are responsible, our liability to pay compensation shall be limited to the predictable damage typical for the type of contract.
- 4.5 If our deliveries or services are delayed due to circumstances for which we are not responsible, such as operational breakdowns, strikes, lock-outs, traffic problems or other unpredictable obstacles occurring at our own works or at our suppliers' works, then the delivery period shall be extended by the period during which such obstacles persisted, provided it can be proved that they had substantial impact on the completion or delivery of the object of delivery.
- 4.6 Customer may rescind the contract if it becomes impossible for us to perform part of the delivery, and if Customer has a legitimate interest in refusing to accept part delivery. In all other cases, the right of rescission shall be limited to the part involved, provided the rest of the contract is not objectively affected by such limitation of the right of rescission. Any cancellation of the contract must be done in writing.
- 4.7 On call deliveries of goods or services must be accepted within 12 months of the receipt of the order. On expiry of this period, we may send the articles not yet called up to Customer at its own expense and invoice them accordingly, or charge for further storage applying the rates in force locally.

## 5. Prices

- 5.1 Prices are without obligation. They are charged in accordance with the prices and discounts applicable on the day of delivery. Unless otherwise agreed in writing, the prices shall be ex dispatch point, and do not include turnover tax [Umsatzsteuer]. The turnover tax shall be charged separately at the rate in force at the time. Packaging costs and the costs for any special form of delivery requested by Customer shall be charged to Customer separately.
- 5.2 Our prices are based on the prices for materials, wages and salaries applying on the date of confirmation of order. If an increase in costs occurs between the confirmation of order and the goods being dispatched or the service being rendered, in particular due to collective bargaining agreements or alterations in prices for materials, then we shall be entitled to alter the final prices accordingly. Any alteration to the final prices shall be in proportion to the increase in costs which has occurred.

## 6. Dispatch, Passing of Risk, Returns

- 6.1 Dispatch shall be ex our works at Customer's risk and expense. This also applies if and insofar as consignment is done with our own means of transport. Customers dispatch instructions shall only be binding if they have been agreed in writing. Customer is obliged to implement suitable checks on delivered goods on identification and transport and packing damages.
- 6.2 Containers, mesh boxes, cassettes and pallets shall not become Customer's property: they must be returned to the owner free of charges.
- 6.3 If Customer gives instructions for dispatch to be delayed, then risk shall pass to Customer at the time when the goods are ready for dispatch. We are entitled to charge Customer the costs incurred for storage, or at least 0.5% of the invoiced amount for each full month, unless Customer proves that the losses sustained are less than this amount. If applicable, we may otherwise dispose over the delivery object after a reasonable deadline has been set and has expired to no avail, and supply Customer on a reasonable later delivery date.
- 6.4 In the event that we agree to take back goods already delivered, the goods must be in perfect condition, as when they were delivered. Goods to be taken back must be returned to us free of charge and at Customer's risk. After the costs incurred upon ourselves by such return delivery have been deducted (plus turnover tax), a credit note shall be issued for the value of the goods.

## 7. Payments

- 7.1 If delivery on credit has been agreed, then our demands shall fall due for payment net cash without deduction in the contractual currency 30 days after the date of invoice. Discounts may only be deducted from payments if they have been agreed with Customer in writing beforehand.
- 7.2 If the payment date is exceeded, then normal bank interest – at a rate of at least 5% over and above Deutsche Bank's base rate in force at the time – shall be charged, notwithstanding any further rights.
- 7.3 FTE will settle a credit range with Customer. If Customer exceeds this range, FTE is not obliged to continue deliveries and must exclude any claims of Customer due to outstanding deliveries. If Customer defaults in making payments to us, or if we learn of any circumstances which may impair Customer's asset position or financial situation, then our claims shall fall due for immediate payment without deduction. In any such case we may domicile or return bills of exchange, and demand immediate payment instead. The same applies in the event of any deferrals.
- 7.4 Payment with bills of exchange must be agreed separately, whereby discount charges shall be paid by Customer and must be paid immediately on presentation of the bill. Bills and cheques shall only be accepted by way of performance. In the case of bills or cheques drawn on outlying places or abroad, we shall not assume any obligation for punctual presentation or protest.
- 7.5 Customer is not entitled to retain payments or to offset them with any counterclaims, unless such counterclaims have been acknowledged by us or established *res judicata* by a court of law.
- 7.6 Deliveries to customers with whom we have no on-going business relations are made in return for the invoiced amount COD, minus 2% discount.

## 8. Provision of Security

If agreed payments are not received punctually, or if - subsequent to conclusion of the contract - we learn of circumstances that might seriously impair Customer's liquidity, then notwithstanding further claims we shall be entitled to demand advance payments or sufficient security for our receivables before the delivery is made, or to rescind the contract if no security is furnished.

## 9. Retention of Title

- 9.1 We reserve title to the goods we supply until such time as all our existing claims vis-à-vis Customer have been settled. We are entitled to insure the object of delivery at Customer's expense, if there is evidence that Customer is not insured in this respect.
- 9.2 Customer is only entitled to process, re-form, combine or mix [goods subject to retention of title] within the limits of its normal business operations.
- 9.3 Processing or re-forming goods subject to retention of title shall be done on our behalf at all times, without this creating any obligation on our part. If the goods subject to retention of title are processed with other items not belonging to us, then we shall acquire co-ownership in the new object up to the value of the reserved goods as a ratio of the other items processed at the time of processing. If the goods we supply are combined or inextricably mixed with other movable objects to make a single item, and if such item may be regarded as the main object, then it is agreed that Customer shall assign *pro rata* ownership to us, insofar as such main object belongs to it.
- 9.4 Customer shall keep the property or jointly owned property on our behalf free of charge. The same shall apply to the new object as applies to the reserved goods.

- 9.5 Excluding all other forms of disposition, Customer is entitled until further notice to re-sell [reserved goods] during the course of normal business operations, insofar as the claim created by such re-sale is assignable. The right to re-sell shall lapse in the event of payments being suspended. In the event of re-sale, Customer here and now assigns to us all its receivables which are thus created. As long as Customer performs its payment obligations, it shall be entitled to collect [receivables]. On request, it shall give us the information required in order to collect [said receivables], hand over documents to us, and notify the debtors about the assignment of its claims. We are authorised to notify third-party debtors about the assignment of the claim on Customer's behalf. If our goods are re-sold with other items, then Customer's claim vis-à-vis its own customer shall be deemed assigned up to the amount given on our invoice. "Sale" as used here shall also include installation of the reserved goods in properties or buildings, and their usage for performing other contracts on doing work or supplying materials.
- 9.6 In the event of default in payment, doubt about Customer's asset position, or deterioration in Customer's financial situation, Customer shall be under obligation to surrender to us on request the goods subject to retention of title. If we take back or pledge the goods, this shall only be deemed rescission of the contract if this is expressly stated in writing. If third parties pledge the goods or interfere in any other manner, Customer must notify us without delay.
- 9.7 Retention of title and the security to which we are entitled shall continue to apply until such time as full exemption has been effected from any contingent liabilities which we have entered into in the interests of Customer.
- 9.8 If the security to which we are entitled under our retention of title exceeds the nominal value of the secured claims by more than 20%, then we undertake to release the security to this extent on request.
10. Tools
- 10.1 Tools for which we charge a share in costs shall remain our property. The costs for maintenance and replacement of tools is settled in an agreement between FTE and Customer
- 10.2 If Customer provides us with tools, then it shall be liable for any damage incurred on us due to defects in the tools, unless Customer is not responsible for the damage.
11. Guarantee, Liability
- 11.1 The following provisions shall apply to our guarantee and other liability for defects in goods supplied or services rendered, including wrong deliveries or services. If our contractual performance also includes assembly, or if it is a separate order for repairs or other performance under a contract on doing work or rendering services, then the following provisions shall also apply to any assembly, repair or other work or services performed.
- 11.2 We afford a guarantee in line with the latest respective standards of technology. Changes in construction or design prior to delivery of an order which do not alter the agreed quality shall not be deemed grounds for complaint.
- 11.3 We shall not assume any guarantee for damage caused due to unsuitable or improper usage, wrong operation, alterations or repairs, wrong or negligent handling, and natural wear and tear. The same applies if unsuitable brake fluid and suchlike are used.
- 11.4 At our option, performance of the guarantee shall be in the form of improvement or replacement of the defective product or part. In individual cases, we reserve the right to issue a credit note for the value of the defective product that has been charged to Customer. Products about which complaints have been lodged must be sent to us for repair free of charge if we so demand. In the event of well-founded complaints about defects, then apart from the costs for improvement or substitute delivery, we shall pay the immediate costs for dispatch nationwide, and for disassembling and assembling the object, provided such costs are in reasonable proportion to the value of the object in respect of which the complaint has been lodged.
- If the products we supply are repaired or altered without our involvement, or if maintenance or installation instructions have not been observed, then our obligation to afford guarantee and our liability in other respects shall lapse. After notifying us accordingly, Customer shall have the right to remedy defects at its own expense only in urgent cases where work safety is at risk, or where damage which is out of all proportion must be averted. We shall refund such costs insofar as they would have been incurred if we had done subsequent improvement.
- The prescriptive period for subsequent improvements or substitute deliveries shall be one year. Following consultations, Customer is under obligation to give us an opportunity to make subsequent improvements. If neither subsequent improvements nor substitute deliveries are effected, then Customer shall be entitled to rescind the contract on expiry of a deadline that has been set. Customer shall also have right of rescission if we are unable to perform or effect subsequent improvement or substitute delivery
- 11.5 If the object delivered cannot be used by Customer in accordance with the contract due to culpable violation of secondary contractual obligations – in particular operating and maintenance instructions – then we shall similarly only be liable to the extent laid down in Item 11.4 above and Item 12 below. We shall only be liable for consultancy services if separate payment for such services has been agreed in writing.
- 11.6 Guarantee and other claims shall become statute-barred 24 months after the date of delivery, or at the latest 30 months after delivery to Customer. If guarantee or other claims are asserted, this shall have no effect on payment obligations and deadlines. If Customer fails to perform its payment obligations, or fails to do so punctually, then our obligations governed by the above provisions shall lapse until such time as said payment obligations have been performed. Customer's right to assert claims based on defects shall depend on Customer duly having performed its obligations to inspect the goods and report defects.
- 11.7 User's guarantee claims are conclusively governed by Section 11 of these Terms of Business. Section 12 below shall apply to any related compensation claims.
12. Overall Liability
- Liability for Customer's losses shall only be assumed if they have been caused due to intent or gross negligence on the part of FTE automotive or those assisting the latter in performing its obligations. This limitation of liability shall apply to all compensation claims for whatsoever legal cause, in particular for claims to compensation for damage to property based on *culpa in contrahendo*, other violations of duty, or tort. The limitation of liability in the above clause shall not apply to any liability laid down by mandatory law, such as under Product Liability Law, or for damage caused due to the lack of expressly warranted characteristics or guaranteed specifications, insofar as the purpose of the warranty or guarantee was to protect Customer against the very damage sustained. Liability shall also be assumed in the event of cardinal duties being breached due to slight negligence, but only up to the amount of the predictable damage typical for the type of contract. Customer is under obligation to take appropriate measures for averting or minimising damage. If the claims to compensation imposed on us are excluded or limited, this shall also apply to the personal liability for damages on the part of our employee, workers, staff, representatives, and those assisting us with the performance of our obligations. The aforementioned restriction shall also apply if Customer demands compensation for wasted expenditure instead of damages.
13. Drawings, Other Records
- We retain the title to and copyright in all cost estimates, drawings and other records provided to Customer. They may not be used for any purpose other than that stipulated by us, nor may they be made accessible to third parties. Customer must obtain our express written permission before passing them on to third parties. At our request, or in the event of the contract not being implemented, our drawings and records must be returned to us immediately.
14. Place of Performance, Venue
- 14.1 Place of performance for all deliveries and payments is Ebern.
- 14.2 Bamberg shall be venue for all and any disputes arising from the contractual relationship. This shall also apply to claims based on bills and cheques, to claims based on tort, to cross complaints, and to proceedings restricted to documentary evidence. We are also entitled to sue Customer at the court having jurisdiction at Customer's business location or place of residence.
15. Data Protection
- In addition, the laws of the Federal Republic of Germany shall apply, excluding CISG dated 11.04.1980.

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