

# Terms and Conditions

## Fortuna Spezialmaschinen GmbH Eisenbahnstr. 15, 71263 Weil der Stadt

### 1. General

- 1.1. The following terms and conditions for sales and delivery apply to deliveries to companies, legal entities under public law and special funds under public law.
- 1.2. Only the general terms and conditions of Fortuna Spezialmaschinen GmbH apply. Any differing terms and conditions of the buyer do not apply.
- 1.3. Our offers are non-binding. Changes due to technical progress and legal requirements, as well as changes concerning shape, colour and/ or weight are reserved within reasonable limits.
- 1.4. We reserve the unlimited rights of estimates and copyright of quotes, drawings and other documentation. Such documents are only to be made accessible to third parties with our prior consent and are to be returned immediately on request.
- 1.5. Punctual and correct delivery remains reserved. This only applies to the case of non-delivery beyond our control, particularly in the case of a congruent hedging transaction with a supplier. We will immediately inform the customer in case an item is unavailable and will give a refund accordingly in case of any cancellation.
- 1.6. Partial delivery is permissible insofar as it is reasonable for the customer.

### 2. Order confirmation, Prices

- 2.1. The order confirmation is the exclusive contractual basis. Differing agreements are subject to our confirmation in writing.
- 2.2. Prices are ex works and are exclusive of freight, packaging, postage, insurance and other incidental costs unless a different agreement was made in writing. All prices are net prices. Value added tax in the amount required by law is invoiced in addition. In the case of sales shipment, a flat shipping rate is added to the sales price.

### **3. Payment**

- 3.1. Full payment is due on delivery or hand-over. The customer is automatically deemed to be in default 30 days after the payment due date if the payment has not been made, without any further notification by the contractor.
- 3.2. In the event that there are defects, the customer has no right to retention, as long as and as far as this not in proportion to the defects and the anticipated costs of the subsequent supplementary performance (especially corrective measures).
- 3.3. The customer is not entitled to assert claims and rights due to defects if he has not made payments or if the amount due (inclusive of potentially paid amounts) is not in proportion to the value of the defective performance.
- 3.4. Payment is due per bank transfer.
- 3.5. In the event of late payment, the contractor is entitled to a default interest of 9% points above the base interest rate. The customer is permitted to provide evidence that the contractor suffered slighter damage; the contractor is permitted to provide evidence of greater damage.
- 3.6. The customer may only set off those claims that are undisputed or have been determined in a manner that is legally binding.

### **4. Delivery schedule, delay**

- 4.1. Delivery schedules are binding if we explicitly confirm them in writing.
- 4.2. Compliance with agreed deadlines for delivery depends on the timely receipt of all documentation to be provided by the customer and any required permits and authorisations, and that the agreed terms of payment and other obligations are fulfilled. If these conditions are not met in time, the deadlines shall be extended accordingly; this shall not apply if we are responsible for the delay.
- 4.3. The delivery deadline is considered to be respected if until its expiry a notice has been sent to the customer informing him that the supplies are ready for dispatch.
- 4.4. If the failure to comply with the deadline is due to force majeure, e.g. mobilisation, war, riot or similar events, e.g. strike or lockout, the deadlines will be extended accordingly.

- 4.5. Where the performance of services is delayed due to intent or gross negligence, or in case of culpable violations that cause fatal or physical injury or damage to health, we shall be liable in line with to legal requirements. Liability is, however, limited to foreseeable damage typical to the contract.
- 4.6. Apart from the cases listed in 4.5, where we are liable due to delay, our liability for compensation in addition to performance is limited to 3%, and for compensation instead of performance (including reimbursement of expenses incurred to no avail) to 5% of the value of the delivery. The customer waives any other claims, even after expiry of a deadline that may have been set by the client. This shall not apply in the case of culpable violation of contractual obligations. Compensation claims for culpable violation of important contractual obligations are, however, limited to foreseeable damage typical of the contract, unless an additional case as set out in 4.5 S.1 has occurred. The customer's right to cancel the contract remains unaffected. This does not lead to a change in the burden of proof to the customer's disadvantage.
- 4.7. The customer is obliged to state upon our request within a reasonable time period whether he is withdrawing from the contract due to the delay in delivery or whether he is insisting on delivery.
- 4.8. If dispatch or delivery is delayed by more than one month at the customer's request after readiness for shipment has been communicated, the customer can be debited a storage fee of 0.5% of the price of the goods to be stored, but not more than 5% in total. The contracting parties have the right to prove evidence of higher or lower storage costs.

## **5. Cancellation fees**

- 5.1. If the customer withdraws from the contract without due cause, or if the contract does not come to fruition for reasons for which the customer is responsible, then we are entitled to demand 20% of the agreed remuneration, notwithstanding our right to claim a higher damage actually incurred.

## **6. Liability for defects**

- 6.1. Claims for defects shall not apply in the case of only slight deviations from the quality agreed, and/ or in the case of only minor impairment of usability.
- 6.2. The customer's demand for supplementary performance is to be made in writing.  
We shall first remove any defects of the delivered items through either repair or replacement at our own discretion.
- 6.3. If the repair is unsuccessful, the customer is entitled to demand a reduction of the purchase price (reduction) or cancellation of the contract (withdrawal) only after the second attempt at repair. In the event of an insignificant contractual violation, especially where the defects are only minor, the customer does not be entitled to a withdrawal.

- 6.4. Obvious defects must be declared in writing within a period of two weeks from receipt of the goods, otherwise no warranty claims will be admitted. A timely dispatch is sufficient to observe the deadline. The customer is responsible for the full burden of proof for all preconditions for making a claim, in particular for the damage itself, for the date when the defect was noticed and for promptly lodging a claim for the defect.
- 6.5. Should the customer choose to cancel the contract owing to a legal or material defect after the failure of supplementary performance, the customer will not be entitled to damage claims in relation to the defect,
- 6.6. Regarding the quality of the goods, only the product description applies. Public statements, claims or advertising by the manufacturer do not represent any additional contractual details of the goods. Information and data contained in information sheets, brochures and other promotional material and information only act as guidelines and only become a binding element of the contract if we have agreed to them in writing.
- 6.7. Specifications concerning quality and durability shall only be considered as guarantees if expressly stated. The same applies to the assumption of a procurement risk.
- 6.9 The customer shall bear the costs incurred for supplementary performance insofar as they increase because the delivered goods have been moved to another location. The legal statute of limitations specified in § 852 BGB shall remain unaffected. Irrespective of any further claims on the part of the supplier, the customer is liable for any expenses incurred for reviewing and remedying a defect in the case of an unjustified notice of defects .

## **7. Limitation of Liability**

- 7.1. In the event of deliberate or gross breach of our obligations, such as culpable injury to life, limb or health, we shall be liable for all damage arising therefrom, unless otherwise stipulated by the law.
- 7.2. In the case of gross negligence, our liability for material and financial damage is limited to the foreseeable damage in standard contractual practice.
- 7.3. In the case of slight negligence, we shall be liable for material and financial damage only in the case of a breach of substantial contractual obligations. In this case, our liability is also limited to foreseeable damage typical of the contact.
- 7.4. Liability for damages beyond the scope specified in paragraphs 1. to 3. above is ruled out regardless of the legal nature of the claim. This applies in particular to tort in accordance with §§ 823, 831 BGB (German Civil Code); any unrestricted liability according to the provisions of the German Product Liability Act remains unaffected.

## **8. Limitation Period**

- 8.1. The limitation period for claims and rights due to defective supply amounts to one year from delivery. This does not apply in the cases of § 438 Abs. 1 Nr. 1 BGB, § 438 Abs. 1 Nr. 2 BGB und § 479 Abs. 1 BGB (German Civil Code). Claims mentioned in the previous sentence are subject to a limitation period of 3 years.
- 8.2. The limitation periods quoted in paragraph one above shall also apply to all damage claims against the contractor that are connected to the defect, regardless of the legal basis of the claim. If claims for damages against the contractor exist which are not connected to a defect, the limitation period of Paragraph 1, Sentence 1 shall apply.
- 8.3. The statute of limitation shall not apply
  - a) in the case of intent,
  - b) if the contractor has wilfully concealed the defect; if the contractor has wilfully concealed a defect, the legal periods of limitation that would apply without the existence of malice shall apply instead of those stated in Section 1.
  - c) in cases of damage to life and limb, health or violation of liberty, for claims under the German Product Liability Act, in case of a breach of duty by gross negligence or in the case of a breach of substantial contractual obligations. In these cases, statutory limitation periods shall apply.

## 9. Reservation of Title

- 9.1. All goods supplied by us shall remain our property until payment of all debts resulting from this contract has been made in full. If the value of the security rights owed to us exceed our claims by more than 20 %, we will, at the customer's request, relinquish a suitable part of the security rights interests.
- 9.2. The customer is obliged to treat the goods with due care. Should maintenance and inspection work be necessary, the customer must perform such work on a regular basis at his own expense.
- 9.3. The customer shall be obliged to inform us immediately if any third party has access to the goods, as in the case of attachment, as well as if the goods have been damaged or destroyed. The customer shall also inform us immediately in the case of ownership of the goods or a change of residence or business location.
- 9.4. We are entitled to cancel the contract and to reclaim the goods in case of conduct that constitutes a breach of contract on the part of the customer, especially concerning late payment or violation of duty as set out in 2 and 3 of these terms and conditions.
- 9.5. The customer is entitled to resell the goods within the scope of regular business. The customer already assign to us all claims by way of security together with all ancillary rights to the amount of the original invoice which would arise from a resale to third party. We accept the assignment.

After the assignment, the customer is authorised to collect the claim until revocation. The customer will forward to us the payments made with regard to the assigned demands in the amount of the insured demand. We reserve the right to collect the claim ourselves in case of legitimate interest, especially if the customer does not comply fully with his payment obligations, gets into arrears, in case of the commencement of insolvency proceedings against the customer's assets, or in case of substantiated evidence of excessive debt or impending insolvency.

We are also entitled to disclose the assignment of securities after issuing a warning with a reasonable deadline, to liquidate the assigned claims as well as to demand that the customer discloses the assignment by way of security to his customer.

In the event of a substantiated legitimate interest, the customer is obliged to supply us with all information enabling us to assert our rights, and to hand over any documentation necessary.

- 9.6 Any modification or processing of the goods by the customer shall always be effected in our name and at our order. Should processing involve objects which do not belong to us, then we shall acquire joint title to the new object proportionate to the value of the goods we have delivered to the value of the other objects processed. The same shall apply if the goods are combined with other objects which are not our property.

Insofar as we acquire ownership or co-ownership after this retention of title, the client shall keep the goods for the contractor and shall treat them with the same care as would a conscientious businessman.

- 9.7 In the event of any violation of obligations on the part of the customer, especially in the case of late payment, we are entitled to demand the return of the item delivered or the new goods without notice, or to withdraw from the contract against a deadline if necessary; the customer being obliged to surrender the goods. The request to surrender the supplied and/or new goods shall not constitute a declaration of withdrawal from the contract, unless this is stated explicitly.

## **10. Final Provisions**

- 10.1. The contract is subject to the national law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) of 11.04.1980.
- 10.2. Our registered place of business is the exclusive place of jurisdiction for any disputes arising from this contract. This also applies if the customer's place of jurisdiction is not in Germany or if place of residence or habitual abode are not known at the time that the lawsuit is filed. We are, however, also entitled to file a lawsuit at the customer's place of residence.