

# FKM Walzentechnik Dr. Freudenberg GmbH – General Terms of Purchase (as of June 2020)

## 1. Scope, Form

1.1 These General Terms of Purchase (GTP) shall apply to all business relations with our business partners and suppliers (Vendors). The GTP shall only apply if the Vendor is an entrepreneur (Section 14 of the German Civil Code (*Bürgerliches Gesetzbuch*; BGB)), a legal entity under public law, or a public-law special fund.

1.2 The GTP shall in particular apply to contracts for the sale and/or delivery of movable goods (“Goods”), no matter whether the Vendor manufactures the Goods directly or purchases them from suppliers (Sections 433, 650 BGB). Unless otherwise agreed, the GTP as amended at the time of the buyer’s order or in any case as last notified to them in text form shall also apply as a master agreement for similar future contracts even if not referred to again from case to case.

1.3 These GTP shall apply exclusively. Any deviating, conflicting, or supplementary general terms of the Vendor shall only become part of the contract if and as far as that we have explicitly agreed to their application in writing. This requirement of consent shall apply in any case, e.g., even if we accept the Vendor’s delivery without any reservation in the knowledge of its general terms.

1.4 Individual agreements made with the Vendor from case to case (including any collateral agreements, supplements, and amendments) shall take precedence over these GTP. A written contract or our written confirmation shall be decisive for the content of such agreements, subject to proof of the contrary.

1.5 Legally relevant declarations and notifications by the Vendor concerning the contract (e.g., setting of deadlines, reminder, withdrawal) must be made in writing, i.e., in written or text form (e.g., letter, email, fax). Legal formal requirements and further evidence, in particular in cases of doubt regarding the legitimacy of the notifying party, shall not be affected.

## 2. Conclusion of the Contract

2.1 Our order shall be deemed binding at the earliest upon written submission or confirmation. The Vendor shall be obligated to confirm our order in writing within a period of two weeks or to execute it without reservation, in particular by dispatching the Goods (acceptance).

## 3. Delivery Deadline and Default of Delivery

3.1 The delivery deadline stated by us in the order shall be binding. If no delivery deadline is specified in the order and has not been agreed otherwise either, it shall be [...] weeks after conclusion of the contract. The Vendor shall be obligated to inform us without undue delay in writing if it is likely to be unable to meet any agreed delivery deadlines, no matter the reason.

3.2 Our rights if the Vendor does not perform or does not perform within the agreed delivery period or if the Vendor has entered default, in particular our rights to rescission and damages, shall be determined based on the statutory provisions. The provisions in item 3.3 shall not be affected by this.

3.3 If the Vendor has entered default, we may charge a penalty for default in the amount of 1% of the net price per completed calendar week, but not more than 5% of the net price of the Goods delivered late in total, in addition to any further statutory claims.

## 4. Performance, Delivery, Passing of Risk, Default of Acceptance

4.1 The Vendor shall not have the right to the performance owed by it rendered by any third parties (e.g., subcontractors) without our prior written consent. The Vendor shall bear the procurement risk for its services, except if otherwise agreed from case to case (e.g., limitation to amounts in stock).

4.2 Delivery shall be DDP (INCOTERMS 2020) to the destination specified in the order. If no destination is not specified and in the absence of any other agreement, the delivery shall be made to our registered office at Stempelstraße 2-4, D-47167 Duisburg. The respective destination shall also be the place of performance for the delivery and any subsequent performance (*Bringschuld*; debt to be discharged at creditor’s domicile).

4.3 The delivery must be accompanied by a delivery note that indicates the date (issue and dispatch), content of the delivery (item number and quantity), and our order identification (date and number). We shall not be liable for any delays in processing and payment resulting from the delivery note being missing or incomplete. A corresponding dispatch notification with the same content must be sent to us separately from the delivery note.

4.4 The risk of accidental loss and accidental deterioration of the object shall pass to us upon handover at the place of performance. As far as acceptance has been agreed, this shall be decisive for the passing of risk. In any other respect, the statutory provisions of the law on contracts for work and services shall apply to acceptance accordingly. Handover or acceptance shall be equivalent to our entering default of acceptance.

## 5. Prices and Terms of Payment

5.1 The price stated by us in the order shall be binding. All prices shall be inclusive of statutory value added tax except if it is indicated separately.

5.2 In the absence of any other agreement from case to case, the price shall include all services and ancillary services of the Vendor (e.g., assembly, installation) as well as any ancillary costs (e.g., proper packaging, transport costs including any transport and liability insurance).

5.3 The agreed price shall be due for payment within 30 calendar days of full delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If we make a payment within 14 calendar days, the Vendor shall grant us a discount of 3% on the net amount of the invoice. In the case of bank transfers, payment shall be deemed to have been made on time if our transfer order is received by our bank before the payment deadline; we are not responsible for any delays caused by the banks involved in the payment process.

5.4 We shall not owe any interest on maturity. The statutory provisions shall apply to default of payment.

5.5 We shall have the right of set-off and retention as well as the defense of non-performance of the contract as far as this is provided for by law. In particular, we shall have the right to withhold any due payments as long as we remain still entitled to claims from incomplete or defective services against the Vendor.

5.6 The Vendor shall have a right of set-off or retention only regarding any counterclaims that have become finally determined or that are undisputed.

## **6. Secrecy and Reservation of Title**

6.1 We reserve the title and copyrights in any illustrations, plans, drawings, calculations, execution instructions, product descriptions, and other documents. Such documents shall be used for performance of the contract exclusively and shall be returned to us upon completion of the contract. Such documents must be kept secret from third parties, even following termination of the contract. The obligation to maintain secrecy shall only expire if and as far as the knowledge contained in the documents provided has become publicly known.

6.2 The above provision shall apply accordingly to any substances and materials (e.g., software, finished and semi-finished products) as well as to any tools, templates, samples, and other items that we provide to the Vendor for production. Such items shall be stored separately at the Vendor's expense and insured to a reasonable extent against destruction and loss until they are processed.

6.3 Any processing, mixing, or combination (further processing) of items provided by the Vendor shall be performed on our behalf. This shall apply accordingly in cases of further processing of the delivered Goods by us, so that we shall be deemed the manufacturer and shall acquire title in the product at the latest upon further processing in accordance with the statutory provisions.

6.4 Transfer of title in the Goods to us shall be unconditional and irrespective of payment of the price. However, if we accept the Vendor's offer for transfer of title conditional on payment of the purchase price from case to case, the Vendor's retention of title shall expire at the latest upon payment of the purchase price for the Goods delivered. We retain the right to resell the Goods in our ordinary course of business, even before payment of the purchase price, subject to advance assignment of the claim arising from this (alternatively, simple reservation of title as extended to the resale shall apply). This shall exclude any other forms of retention of title, in particular extended retention of title, transferred retention of title, and the retention of title extended to further processing.

## **7. Defective Delivery**

7.1 Our rights in cases of defects of material and defects of title of the Goods and in cases of any other breaches of obligations by the Vendor shall correspond to the statutory provisions, except if otherwise stipulated below.

7.2 The statutory provisions (Sections 377, 381 HGB) shall apply regarding the commercial obligation of examining the Goods and reporting any defects, subject to the following proviso: Our obligation to inspect the goods shall be limited to defects that become apparent during our inspection of incoming Goods at external examination, including the delivery documents (e.g. transport damage, incorrect and short delivery) or that are evident during our quality control in the random-sample procedure. As far as acceptance has been agreed, we shall not be subject to any inspection obligation. Apart from this, it shall depend on the scope at which an investigation is feasible in the ordinary course of business, under consideration of the circumstances from case to case. Our obligation to report any defects discovered at a later time shall not be affected by this. Irrespective of our inspection obligation, our report (notice of defect) shall be deemed made without undue delay and in time if it is dispatched within 5 working days of discovery or, in the case of obvious defects, of delivery.

7.3 Subsequent performance shall also include removal of the defective Goods and their re-installation, provided that the Goods have been installed in another item or attached to another item in accordance with their nature and purpose of use; our statutory claim to reimbursement of expenses connected to this shall not be affected. The expenses incurred from inspection and subsequent performance shall be borne by the Vendor even if no defect is found in the end. Our liability for damages in cases of unjustified request to remedy a defect shall not be affected; however, we shall only be liable for this if we were aware or grossly negligently unaware of there not being any defect.

7.4 The following shall apply without any prejudice to our statutory rights and the provisions of Item 7.5: If the Vendor does not meet their obligation to remedy the defect, at our discretion by remedying the defect (rectification) or by delivering a defect-free item (replacement), within a reasonable period of time set by us, we may remedy the defect ourselves and demand reimbursement of the expenses required for this or a corresponding advance payment from the Vendor. If subsequent performance by the Vendor has failed or is unreasonable for us (e.g., due to particular urgency, risk to operational safety, or imminent risk of disproportionate damage), a deadline shall not be required; we shall inform the Vendor of such circumstances without undue delay, and in advance if possible.

7.7 Apart from this, we shall be entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions in case of any defect of material or defect of title. We shall also have the right to claim damages and reimbursement of expenses in accordance with the statutory provisions.

## **8. Producer's Liability**

8.1 If the Vendor is responsible for product damage, they shall indemnify us against any claims by third parties as far as the cause is within their sphere of control and organization, and as far as they are liable in the external relationship.

8.2 The Vendor shall reimburse expenses pursuant to Sections 683, 670 BGB from or in connection with any third-party claim, including recall campaigns performed by us, within the scope of their indemnification obligation. We shall inform the Vendor of the content and scope of recall measures as far as possible and reasonable and give them the opportunity to make a statement. Further statutory claims shall not be affected.

8.3 The Vendor shall take out and maintain product liability insurance with a flat-rate coverage in the amount of at least EUR 10 million per case of injury/property damage.

## **9. Expiration**

9.1 The mutual claims of the contracting parties shall expire in accordance with the statutory provisions, except as otherwise stipulated below.

9.2 Deviating from Section 438 (1) (3) BGB, the general expiration period for claims for defects shall be 3 years from the passing of risk. As far as acceptance has been agreed, the expiration period shall commence upon acceptance. The expiration period of three years shall also apply accordingly to any claims arising from defects of title. The statutory expiration period for third-party claims in rem for surrender of Goods (Section 438 (1) (1) BGB) shall not be affected in this case: Additionally, no claims arising from defects of title shall expire while the third party can still assert any right against us, in particular if no expiration period applies.

9.3 The expiration periods under sales law, including the above extension, shall apply to all contractual claims for defects as far as provided by law. As far as we are also entitled to any non-contractual claims for damages due to a defect, the regular statutory expiration period (Sections 195, 199 BGB) shall apply, except if application of the expiration periods under sales law would lead to a longer expiration period from case to case.

#### **10. Jurisdiction and Venue**

10.1 The contractual relationship shall be governed by German law, subject to exclusion of the UN Convention on Contracts for the International Sale of Goods.

10.2 The exclusive place of jurisdiction, also internationally, shall be Duisburg.