

# General Terms of Delivery

## for the Products and Services of Institut Dr. Foerster GmbH & Co. KG



### Scope

- 1) Offers by the Supplier as well as the sale and delivery of movable goods or services ("**delivery items**") to other companies, corporate bodies under public law or special funds under public law are provided exclusively on the basis of these General Terms of Delivery in their respective latest version. These Terms also apply to all future business relationships even if they are not explicitly agreed upon again.
- 2) Statements to the contrary by the Purchaser with reference to his own General Terms or Conditions of Purchase are rejected herewith. Even if the Supplier remains silent about the Purchaser's Conditions, this cannot be construed in any form as acceptance or agreement of the Purchaser's conditions.
- 3) Individual agreements concluded with the Purchaser covering specific cases, including collateral agreements, modifications and amendments, will always take priority over these General Terms of Delivery. As regards the contents of such individual agreements, unless there is evidence to the contrary, a written agreement or our written confirmation shall be authoritative.
- 4) Legally relevant declarations and notifications by the Purchaser with regard to the agreement (e.g. deadlines, notification of defects, withdrawal from the agreement or reductions), must be given in writing, i.e. in a written form or in text form (e.g. by letter, email, telefax). Legal formal requirements and other evidence, particularly if there are doubts about the legitimacy about the party issuing the statement, remain unaffected.

### I. Offers and Conclusion of Contract

- 1) Our offers are non-binding and can therefore be revoked by us at any time prior to and up to two working days after we have received the Purchaser's acceptance. In all cases, our offers and acceptances are conditional upon the export being officially approved (suspensive condition). If the export of delivery items is not approved, then the Supplier is entitled to withdraw from the contract at any time; this applies in particular to belated export restrictions.
- 2) The Purchaser is bound by his purchase order for a period of 14 days. The Supplier will notify his acceptance of the order in writing unless the Supplier supplies the delivered items immediately or sends an invoice.
- 3) The information provided by the Supplier's specifications will determine the contracted quality of the supplied products and services.

If the lifespan of parts subject to wear and tear is not included in the specifications, then the lifespan of these parts must conform to the usual lifespan of such parts. The usual lifespan depends on the extent to which these parts are utilized (single-shift or multi-shift operation).

If no particular specifications regarding the products or services exist, then the Supplier's confirmation of order shall be considered as the specifications.

As regards partly completed machinery as defined in Article 2 para. 1 lit. g) of Directive 2006/42/EC, protective devices will only be included with the delivery if such devices are specifically and explicitly agreed upon.

Insofar as they apply to the safety of delivery items or services, the regulations of the Association of German Electrical Engineers will apply for all delivered items and services. Deviations from their guidelines are permissible as long as the same degree of safety is guaranteed by other means.

- 4) If the quality of the product was not specifically agreed upon in an individual contract, the statutory provisions will apply when assessing whether the product is defective or not. The Supplier is not liable for public comments made by the manufacturer or other third persons (e.g. advertising statements) which the Purchaser did not specifically tell the Supplier about or refer to as a critical factor affecting his purchasing decision. Information given in the Supplier's specifications describing the quality of delivered items is not a guarantee; in particular, it does not constitute a guarantee of durability.

Information regarding the scope of deliveries and services does not constitute a guarantee that the Supplier has assumed the risk of procurement.

Deliveries and services promised by the Supplier are always subject to the reservation that the Supplier receives correct and punctual deliveries from his own sub-suppliers.

Any guarantee or warranty as to the availability of products or their components requires a prior specific written agreement between the parties which explicitly includes the terms "guarantee" and "risk of procurement".

- 5) If the Supplier does not explicitly assume responsibility for the installation of delivered items, then the responsibility for their installation will lie exclusively with the Purchaser. Should the Purchaser assume responsibility for the installation himself, then the Purchaser must commission an installation team authorized by the Supplier. Drawings or other information provided by the Supplier about the installation of the delivered items do not constitute instructions for in-

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stallation but only provide information about the dimensions of the delivered item and the locations where the delivered item can be installed.

### II. Prices

- 1) Unless expressly agreed otherwise, prices are net ex works (Incoterms 2010) excluding packaging,
- 2) Orders for which no fixed prices were expressly agreed upon will be invoiced at the list price effective on the date of delivery.

### III. Retention of Title, Claim for Return, Right of Release in Cases of Over-securitization

- 1) Delivered goods remain the property of the Supplier until all outstanding claims arising from the business relationship between the Supplier and the Purchaser have been settled in full. Respective payments will only be considered as having been effected after the Supplier has received payment for the respective claim.
- 2) Unless the Purchaser is barred by other contractual agreements from re-selling the delivered goods, the Purchaser is permitted to sell on the goods to which the Supplier retains title in the normal course of business; the Purchaser is not entitled to pledge or assign the goods as security. The Purchaser must secure the Supplier's rights to the goods if the Purchaser resells the goods on credit.
- 3) The Purchaser herewith already assigns his claims arising from the resale of the reserved goods to the Supplier; the Supplier accepts the assignment of claims. Notwithstanding this assignment of claims and the Supplier's right to collect payment himself, the Purchaser is entitled to collect payment as long as he complies with his payment obligations to the Supplier and is not verging on bankruptcy. At the Supplier's request, the Purchaser must provide the Supplier with information about the assigned claims required for their collection, and the Purchaser must inform his debtors about the assignment.
- 4) If the reserved goods are sold on together with other goods, irrespective of whether the goods have been processed, commingled or combined with other goods or not, then the assignment agreed upon above only applies to the invoice value of the goods subject to retention of title which have been sold on together with other goods.
- 5) The Purchaser must inform the Supplier without delay about any execution proceedings by a third party with regard to the reserved goods or the assigned claims and must provide the Supplier with all necessary documents required for an intervention.
- 6) If the Purchaser is in breach of contract, in particular if the Purchaser is in default of payment with regard to the outstanding purchase price, then the Supplier is entitled to withdraw from the contract in accordance with the statutory regulations or/and to demand the return of the goods based on the Supplier's retention of title. The demand for return of the goods does not constitute a declaration of withdrawal from the contract; the Supplier is entitled to demand the return of the goods while still reserving the right to withdraw from the contract. If the Purchaser does not pay the outstanding purchase price, then the Supplier is only entitled to assert these rights if he has already previously granted the Purchaser an adequate deadline for payment which the Purchaser did not comply with or if such granting of deadline for payment is unnecessary under the statutory regulations.
- 7) If the Supplier's secured rights to the goods exceed the sum of all the Supplier's unpaid claims against the Purchaser by more than 10%, then, at the Purchaser's request, the Supplier will release the security to which he is entitled at his own discretion.
- 8) The Purchaser must insure the goods subject to retention of title at his own expense against theft, breakage, fire, water and other damage.

### IV. Terms of Payment, Withdrawal for Non-payment

- 1) Payments become due at the time agreed for payment. If no specific date was agreed for payment, then the payments become due on receipt of the invoice or an equivalent statement of account. If the date of receipt of invoice or the statement of account is uncertain, then payment will become due on receipt of our deliveries and services.
- 2) The Purchaser is not entitled to refuse payment because of counterclaims or to offset payments against any counterclaims, unless the Supplier has accepted these counterclaims or the counterclaims have been recognized by declaratory judgment.
- 3) If it becomes apparent after the contract has been concluded (e.g. by filing a petition to open insolvency proceedings) that the Supplier's claim for payment of the purchase price is at risk due to the Purchaser's inability to pay, then the Supplier is entitled to withhold performance in accordance with the statutory regulations and – if necessary after setting a deadline for the Purchaser – to withdraw from the contract (Sect. 321 of the BGB [German Civil Code]). If the contract was for the manufacture of custom-made items (special one-off products), then the Supplier is entitled to withdraw from the contract immediately;

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the statutory regulations about dispensing with the necessity to set a deadline will be unaffected.

### V. Delivery, Term of Delivery, Delayed Delivery and Non-performance

- 1) Unless otherwise agreed upon, deliveries of goods are FCA the Supplier's premises (Incoterms 2010) which is also the place of performance for delivery and for any rectifications. This also applies if it has been agreed that the Supplier will dispatch the goods or part of the goods on behalf of the Purchaser. Unless otherwise agreed upon, the Supplier is entitled to decide on the manner of shipping (in particular, the carrier, dispatch route and packaging) himself.
- 2) The delivery date is the date given in the written confirmation of order. If the Purchaser has not provided all documents, approvals and clearances, etc. that he was required to provide at least one month prior to the agreed delivery date, then the date of delivery given in writing will be postponed by one month, starting from the date on which the above-mentioned documents, approvals and clearances, etc. are received by us in their entirety.
- 3) The delivery period has been complied with if the goods to be delivered have left the factory by the time of expiry of the delivery date or, if they are collected by the Purchaser, on the date on which the Purchaser has been informed by the Supplier that the goods are ready for shipment.
- 4) Unless otherwise agreed upon, in on-call supply contracts the Purchaser must agree on fixed delivery amounts in advance for a period of at least 6 months and must call the respective delivery amounts in accordance with the agreed delivery schedule in good time prior to the respective date of delivery. If the Purchaser does not comply with this obligation or does not comply with the agreed schedule, then the Supplier is entitled, after setting an appropriate deadline, to make the call and/or organize the scheduling himself, deliver the goods or cancel the contract. Cancellation of the contract does not affect the Supplier's right to claim for damages for breach of obligations.
- 5) Deliveries and services promised by the Supplier are always subject to the reservation that the Supplier receives correct and punctual deliveries from his own sub-suppliers.
- 6) If the Purchaser is in delay of acceptance of performance, then the Purchaser must reimburse the Supplier for damages caused by this breach of duty, in particular, for expenses incurred by the storage of the delivery items. This does not apply if the Purchaser is not liable for this breach of obligation. In this case, the

Purchaser's obligation to bear the costs is limited to the expenses incurred by the Supplier for storage of the delivery items. After setting a reasonable deadline for acceptance of performance and the expiry of this deadline, the Supplier is also entitled to dispose of the delivery items elsewhere and to supply the Purchaser after a suitably extended delivery period.

### VI. Force Majeure

The occurrence of unpredictable circumstances or events independent of the will of either of the parties, in particular all cases of force majeure, entitle the Supplier to extend the delivery dates and delivery periods depending on the extent and duration of these circumstances and their consequences, without this giving the Purchaser the right to cancel the contract or to claim for damages. However, if such circumstances occur, the Supplier is entitled to cancel the order in whole or in part without the Purchaser being entitled to any claims for damages from this cancellation. Events viewed as force majeure for the purposes of this provision include, in particular, earthquakes, fire, flooding, civil unrest, government regulations, decisions or other measures or any other type of event of a similar or dissimilar nature which must be characterized as an unpredictable event or as an event occurring independently of the will of either party.

### VII. Passing of Risk

- 1) Unless otherwise agreed upon, deliveries of goods are FCA the Supplier's premises (Incoterms 2010), and this also applies even if it is agreed that shipment of the delivery items or of part of them is carried out by the Supplier on behalf of the Purchaser. In each case, the risk of accidental destruction or accidental deterioration of the delivery items passes to the Purchaser at the latest when the goods are handed over to the forwarding agent, the haulier or the person or institution charged with execution of the shipment, even if deliveries are made in instalments. At the Purchaser's request, the consignment will be insured by the supplier at the Purchaser's expense against theft, breakage, transportation, fire and water damage as well as other insurable risks. If acceptance of the delivery items is agreed, this is authoritative for the passing of risk. Otherwise, the statutory provisions of the laws governing contracts for work and services apply accordingly to the agreed acceptance of delivery items. The handover or acceptance will be deemed to have taken place if the Purchaser is in default of acceptance.

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- 2) If shipment is delayed at the Purchaser's request or due to circumstances for which he is responsible, then the risk passes to the Purchaser on the day the Supplier informs the Purchaser that the goods are ready for dispatch or on the agreed date of delivery; however, if the Purchaser requests it, the Supplier must take out the insurance cover demanded by the Purchaser at the Purchaser's expense.

### VIII. Acceptance / Notice of Defects

- 1) The Purchaser's obligation to inspect the goods and give notice of any defects is determined by Sect. 377 HGB [German Commercial Code].
- 2) Delivered goods must be accepted by the Purchaser, even if an insignificant reduction in value or suitability for use is detected in these goods.
- 3) Delivery in instalments is permissible.

### IX. Defects / Statutory Period of Limitation / Supplier's Liability / Substitute Performance / Inspection Costs

- 1) If the delivery item is not free of defects or if goods do not meet the characteristics guaranteed by the Supplier, then the Supplier must, at his own discretion, either remedy the defect or replace the item with an item which is free of defects (collectively referred to as "supplementary performance"). Wear parts which are free of defects at the time of passing of risk but whose lifespan is shorter than the statutory period of limitation prescribed in IX. para. 4) are not classed as defective because of their shorter lifespan.
- 2) If the supplementary performance fails after two unsuccessful attempts at rectification, then the Purchaser has the choice of either cancelling the contract or reducing the purchase price.
- 3) We will refund the expenses necessarily incurred for the purposes of inspection and supplementary performance, in particular the costs of transport, in accordance with the statutory provisions if an actual defect is found. Otherwise, we are entitled to demand that the Purchaser reimburse us for the costs incurred in the context of the unjustified demand for removal of defects (in particular, the associated costs of inspection and transport), unless the Purchaser would not have been able to see that the items were not defective.
- 4) If the Supplier opts to repair the defect himself, then he must bear the costs required for the repair. The Purchaser must bear any costs incurred due to the delivery item being moved to a location other than the Purchaser's premises or the contractually agreed final point of destination. If the Supplier was not obliged to

install/mount the original item, then supplementary performance will not include disassembly and removal of the defective item or installation/mounting of the repaired/new item. If the Purchaser carries out the supplementary performance, the Purchaser's claim for reimbursement of costs is limited to the costs which can be actually attributed to the Supplier's share of the scope of delivery and services.

- 5) Contrary to Sect. 438 para. (1) No. 3 BGB [German Civil Code], the regular statutory period of limitation for defective delivery items, which are not usually applied to buildings, is 1 year from the date of delivery of the items to the Purchaser. If an acceptance procedure has been agreed upon, then the statutory period of limitation begins with the date of acceptance.
- 6) In the case of supplementary performance, the statutory period of limitation for those parts of the delivery item which were unaffected will continue unchanged. The statutory period of limitation for the rectified or replaced item is one year, starting from the date of completion of supplementary performance. The statutory period of limitation will run at least until the expiry of the warranty period of the original delivery item.
- 7) The Purchaser is not entitled to claim for defects due to an insignificant reduction in the value or serviceability of the delivery item.
- 8) If the delivery items are second-hand goods, then any claims for defects are barred.

### X. Other Liability

- 1) Unless otherwise stated in these Terms of Delivery including the following provisions, in the case of breach of contractual and non-contractual duties the Supplier is liable in accordance with the statutory regulations.
- 2) In cases of fault-based liability, the Supplier is only liable for damages – irrespective of their legal basis – in cases of intent or gross negligence. In cases of ordinary negligence, the Supplier is only liable, subject to the legal limitation of liability (e.g. diligence usually employed in one's own affairs; immaterial breach of obligations) for
  - a) damages arising from injury to life, limb or health,
  - b) damages arising from breach of a material contractual obligation (obligation whose fulfilment is required for the proper execution of the contract and on which the Purchaser relies and is entitled to expect); in this case, the Supplier's liability is limited to reimbursement for foreseeable, typically occurring damages.
- 3) The limitation of liability resulting from para. 2 above also applies to breaches of duty by or for the benefit



of persons for whose culpability the Supplier is legally liable. They do not apply if the Supplier has fraudulently concealed a defect or has issued a guarantee for the condition of the goods or for claims of the Purchaser under the German Product Liability Act.

- 4) The Purchaser is only entitled to withdraw from or cancel the contract for breach of duty unconnected to any defect if the Supplier is responsible for the breach of duty. A free right of cancellation by the Purchaser (in particular pursuant to Sections 650, 648 BGB [German Civil Code]) is excluded. In all other respects, the statutory requirements and legal consequences apply.

#### **XI. Claims for Damages Arising from Violation of the Duty of Care**

- 1) Claims for damages for other breaches of duty, in particular, violations of the duty of care or obligations arising from quasi-contractual relationships, are excluded unless they are based on gross negligence or intent, on the Supplier's breach of important contractual duties (cardinal duties) or on injury to life, limb or health caused by the Supplier, one of his executives or a vicarious agent of the Supplier. If the Supplier is liable to pay for damages arising from ordinary negligence, then the claim for damages is limited to typically foreseeable damages. Any liability for production downtimes and/or lost profit is excluded in cases of ordinary negligence. This limitation of liability applies correspondingly for grossly negligent conduct on the part of a vicarious agent of the Supplier.
- 2) The limitation of liability described in para. 1) applies accordingly to claims in tort.
- 3) Claims for damages arising from other breaches of duty outlined in this clause become statute barred after one year from the end of the year in which the claim arose and the Purchaser obtained knowledge about the circumstances on which the claim is based or should have obtained knowledge if he had not been grossly negligent. Insofar as the Supplier is liable for breach of his duty of care, this restriction of the statutory period of limitation does not apply in cases of intentional or gross breach of duty, culpable violation of a material contractual obligation, culpable injury to life, limb or health, fraudulent concealment of defects, liability in accordance with the German Product Liability Act or acceptance of a guarantee of certain qualities.

#### **XII. Industrial Property Rights**

- 1) Claims against the Supplier, the Supplier's executive or administrative bodies, managerial staff or vicarious agents for damages arising from the infringement of trademarks, patents, patent applications, utility models, registered designs and copyrights are excluded except in cases of grossly negligent breach of duty or intent on the part of the Supplier, his managerial staff or vicarious agents or if the Supplier has guaranteed the non-infringement of the aforementioned industrial property rights or is liable for an injury to life, limb or health. This limitation of liability does not apply to a breach of important contractual duties (cardinal duties) for which the Supplier, his managerial staff or vicarious agents are responsible.

If the supplier or his executive or administrative bodies, managerial staff or vicarious agents are liable to pay damages for ordinary negligence (breach of cardinal duties), then payment for damages is limited to typically foreseeable damages.

Liability for production downtimes and profit loss is excluded in cases of liability for ordinary negligence. This limitation of liability applies accordingly to grossly negligent conduct by a vicarious agent of the Supplier.

- 2) The Purchaser's right to withdraw from the contract for breach of the abovementioned industrial property rights is unaffected.

#### **XIII. Software Licensing Agreements**

- 1) Use of the software installed on the delivery item is additionally subject to the software licensing agreement for the provision of software and the open-source software's licensing agreement. The licensing agreements are available on the company website [www.foerstergroup.de](http://www.foerstergroup.de).

The texts of the licensing agreements can also be provided in electronic form or on paper, on request. Use of the software is only possible after accepting the licensing agreements.

- 2) If there is a contradiction between these General Terms of Delivery and the provisions of the licensing agreements, the provisions of the licensing agreements will take precedence. The provisions of the offer or of these General Terms of Delivery additionally apply.

#### **XIV. Suspension of the Statutory Period of Limitation During Negotiations**

Negotiations on liability for defects or other claims for damages shall only be considered to be in progress if

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the parties have stated in writing that they are negotiating such claims.

If invoking the requirement of written form constitutes an abuse of legal rights, then neither of the parties may invoke adherence to the requirement of written form.

### **XV. Rights of Ownership**

The Supplier retains the absolute copyright and all proprietary rights of exploitation to all cost estimates, drawings and other documents; such documents etc. may only be made available to a third person or party with the prior approval of the Supplier. Drawings and other documents pertaining to quotations must be returned immediately on request if no order is placed and without any retaining any copies. Data carriers containing digital documents must be similarly returned, the data must be completely deleted and, where necessary, the Supplier must be assured that the data has been deleted.

### **XVI. Final Clause**

- 1) These General Terms of Delivery and all legal relationships between the Supplier and the Purchaser are subject to the laws of the Federal Republic of Germany.
- 2) Exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Stuttgart or, at the discretion of the Supplier, the Purchaser's place of jurisdiction.
- 3) Should one or more of the provisions of these General Terms of Delivery or a provision in another agreement between the parties be or become invalid, this will not affect the validity of any of the other provisions or agreements. As long as the invalid provision is not part of the General Terms and Conditions of Business, the parties will undertake to replace the invalid provision by a valid provision which will best achieve the economic purpose of the invalid provision in a manner deemed legally valid.

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