

General Terms and Conditions of Sale, Labour and Delivery of FEIG ELECTRONIC GmbH

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§ 1 General Information, Scope of Application

(1) These General Terms and Conditions of Sale, Work and Delivery (hereinafter referred to as Terms and Conditions, "T&C") apply for all our business relationships with our Customers ("Buyers"). The T&C shall apply only where the Supplier is an entrepreneur (§ 14 BGB [German Civil Code]), a legal entity governed by public law or a special fund under public law.

(2) The T&C shall in particular apply to contracts regarding the sale and/or delivery of movable objects ("goods"), without consideration of whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Unless anything to the contrary is agreed, the T&C shall apply in the version applicable at the time of the Buyer's order or in the most recent version forwarded to him in writing as a framework agreement which applies for similar, future agreements, without reference having to be made to these in individual cases.

(3) These T&C shall apply exclusively. Any differing, contradictory or supplementary general terms and conditions of the Supplier shall form part of the contract only and to the extent that we have expressly approved their validity in writing. This requirement for approval shall apply in all cases, for example, even if we make a delivery to the Buyer without reservation and in full knowledge of the general terms and conditions of this Buyer.

(4) Individual agreements reached with the Buyer in specific cases (including subsidiary agreements, addenda and amendments) shall in every case take precedence over these T&C. The content of such agreements shall be determined by a written contract and/or our written confirmation in the absence of evidence to the contrary.

(5) Any legally significant declarations and notices to be submitted to us, where necessary, by the Supplier after conclusion of contract (e.g. setting of deadlines, reminders, declaration of withdrawal or price reduction) must be received in written form in order to be effective.

(6) References to the application of statutory provisions are for clarification purposes only. Even without such clarification, statutory provisions shall therefore apply, insofar as they are not directly altered or expressly excluded in these T&C.

§ 2 Conclusion of Contract

(1) All of our quotations are non-binding and without obligation. This shall also apply if we have ceded catalogues, technical documents (e.g. sketches, plans, invoices, calculations, references to DIN norms [German Industrial Standard]), other product specifications or documents - including in electronic form - to which we retain property and intellectual rights, to the Buyer.

(2) The order of goods by the Buyer shall be considered a binding contractual offer. Unless anything to the contrary is stated in the order, we shall be entitled to accept this contractual offer within four (4) weeks of receipt by us.

(3) The contract shall only enter into force with our order confirmation.

§ 3 Delivery Time and Default in Delivery

(1) The delivery time shall be individually agreed and/or quoted by us when accepting the order; any individually agreed delivery time must be made in writing. The delivery dates specified in our order confirmations are our despatch dates.

(2) Should the Buyer require any changes to the purchased goods after an order confirmation has been provided, in particular to the technical standards of a purchased good to be completed, then this shall constitute a new offer, which requires approval on our part. The delivery time shall then only commence upon confirmation of the change, which represents approval of this new offer.

(3) Insofar as we cannot adhere to the binding delivery dates due to reasons for which we are not culpable (non-availability of service), then we shall immediately inform the Buyer thereof and simultaneously communicate the new expected delivery time. We are entitled to defer the delivery and/or the service for the duration of the obstruction, plus an appropriate start-up period. Should the service also not be available within the new delivery time, we shall be entitled to withdraw in part or in full from the contract; any remuneration already provided by the Buyer shall be immediately reimbursed. In particular, cases that shall apply as non-availability of service in this context include delayed delivery by our suppliers, if we have agreed a congruent cover transaction whereby neither we nor our suppliers can be considered culpable or we are not obliged to purchase in the respective individual case. We shall be entitled to reasonable partial deliveries in all cases.

(4) Our entry into default of delivery shall conform with statutory regulations. In all cases, however, a reminder thereof from the Buyer shall be necessary - insofar as the terms deviate from statutory regulations. Should we enter into default of delivery, then the Buyer may require a lump sum compensation caused by the delay. The lump sum compensation shall amount to 0.5 % of the net price (delivery value) for each completed calendar week, yet totalling no more than 5 % of the delivery value of the delayed delivered goods. We reserve the right to furnish proof that the Buyer is not entitled to any compensation or only to a substantially lower compensation payment than the above lump sum.

(5) The rights of the Buyer as laid down in § 8 of these T&C and our legal rights, in particular in the event of exclusion of the duty of service (e.g. due to the service and/or supplementary performance being impossible or unreasonable), remain thereby unaffected.

§ 4 Delivery, Transfer of Risk, Approval, Default of Acceptance

(1) Deliveries are executed ex-works, which is also the place of fulfilment for the service and any supplementary performance. Upon request from, and at the expense of, the Buyer, the goods may be despatched to another place of destination (sales shipment). Insofar as no other agreement has been reached, we are entitled to determine the nature of despatch ourselves (in particular the transport company, route of despatch, packaging).

(2) The Buyer assumes the risk of sudden loss or deterioration in the condition of the goods on handover no later than upon transfer to the Buyer. For sales shipments, the risk of sudden loss or deterioration in the condition of the goods and the risk of delay shall already be transferred to the haulier, carrier or to the other person or establishment designated for the execution of the despatch. If acceptance is agreed, this shall be binding for the transfer of risk. Acceptance shall also be governed by the statutory regulations for the law on labour contracts. The same shall apply to the handover if the customer is in default as regards acceptance.

(3) Should the Buyer enter into default of acceptance, should he neglect an act of co-operation, or should our delivery be delayed due to reasons for which the Buyer is culpable, then we shall be entitled to demand compensation for the damages arising therefrom, including additional expenses (e.g. storage costs). For this, we shall invoice a lump sum indemnity in the amount of 0.5 % of the product price per calendar day, beginning with the delivery time or - in the absence of a delivery time - with the notification that the goods are ready for despatch. Proof of any higher damages and our statutory claims (in particular our rights arising from § 373 HGB [German Commercial Code], damages from additional expenses, appropriate indemnity, termination) remain thereby unaffected; the lump sum shall however be calculated against ongoing cash claims. The Buyer shall bear the burden of proof for demonstrating that no or substantially less damage has been caused than that contained within the above lump sum.

§ 5 Prices and Terms of Payment

(1) Insofar as nothing else has been individually agreed, we remain bound to the prices contained within our offer for 30 days from the date specified in the offer. Should a Buyer make a binding contractual offer within this period by ordering the goods (see § 2 Para. 2 of these T&C), which we subsequently accept by means of an order confirmation, then the prices contained within the respective offer shall apply, ex works / Weilburg-Waldhausen storage, plus statutory VAT.

(2) In cases of sales shipments (§ 4 Para. 1), the Buyer shall bear the transport costs from storage and, where applicable, the cost of the Buyer's preferred transport insurance plus a lump sum for packaging and despatch. Any tolls, fees, taxes and other public duties shall be borne by the Buyer.

(3) Unless otherwise agreed in writing, the purchase price shall be due and must be paid within 30 days of provision of the invoice, net checkout and delivery and/or acceptance of the goods. Even in the context of an ongoing business relationship, we nonetheless remain entitled at any time to only execute delivery upon receipt of partial or full prepayment. We shall declare a corresponding proviso no later than with the order confirmation.

(4) A payment shall only be deemed to have been made once we are able to access the sum.

(5) The Buyer shall be in default with the expiration of the aforementioned payment term. The purchase price shall be subject to interest for the course of the delay in accordance with the legally applicable default interest rate. We reserve the right to assert a claim for further default damages. With respect to businesspeople, our claim for commercial interest on maturity (§ 353 HGB) remains thereby unaffected. In the event of default of payment on the part of the Buyer, we shall also be entitled to maturity of the full residual balance, even if we have already accepted partial payments. In the event that substantial deterioration of the Buyer's financial situation is established, we shall additionally be entitled to require prepayments or the provision of sureties.

(6) The Buyer only has rights of offsetting and retention insofar as his claim has been legally proven or is undisputed. In the event of defects upon delivery, the opposing rights of the Buyer, in particular those laid down in § 7 Para. 8 Clause 2 of these T&C, shall remain unaffected.

(7) Should it become apparent following the conclusion of the contract (e.g. by applying for the opening of bankruptcy proceedings), that our claim to the purchase price is at risk due to the Buyer's lack of capacity to fulfil the service, then we shall be entitled to refuse service and - after an appropriate grace period where applicable - withdraw from the contract in accordance with statutory provisions. (§ 321 BGB). In cases of contracts regarding the manufacture of non-represented objects (single-unit productions), we may declare withdrawal immediately; the statutory regulations regarding the dispensability of the grace period shall remain unaffected.

§ 6 Retention of Ownership

(1) Until the complete payment of all our current and future receivables arising from the sales contract and the ongoing business relationship (assured receivables) has been made, we shall retain ownership of the sold goods.

(2) Until complete payment of the assured receivables has been made, the goods subject to ownership retention may not be pledged to third parties or assigned as surety. The Buyer must inform us immediately in writing if an application to open insolvency proceedings is issued, or if the goods belonging to us are seized by third parties (e.g. attachments).

(3) In the event that the Buyer contravenes the contract, in particular by failing to pay the due purchase price, we shall be entitled to withdraw from the contract in accordance with statutory provisions, and to reclaim the goods on the grounds of ownership retention and withdrawal from the contract. Should the Buyer fail to pay the due purchase price, we may only assert these rights if we have set an appropriate time period for the Buyer to complete the payment, without success, or if such a period is dispensable according to the statutory provisions.

(4) Until the point of recall, the Buyer is hereby authorised in accordance with the following point (c) to further sale and/or processing of the goods subject to ownership retention in the course of his ordinary business. In such cases, the following provisions shall also apply:

(a) Ownership retention shall be extended to the products arising from the processing, amalgamation or combination of our goods to their full value, whereby we are considered the manufacturers. Should the property rights of third parties continue to exist following the processing, amalgamation or combination with their goods, then we shall receive joint ownership on the basis of the proportional values of the processed, amalgamated or combined goods. Otherwise, the same shall apply for the new product as for the delivered goods that were subject to ownership retention.

(b) The Buyer hereby already assigns as surety the receivables arising from the resale of the goods or of the product to third parties in full and/or in the amount of any proportion of joint ownership, in accordance with the above clause. We accept this assignment. The obligations of the Buyer specified in Para. 2 shall also apply in regard to the assigned receivables.

(c) The Buyer shall also be authorised along with us to the redemption of these receivables. We hereby undertake not to redeem the receivables provided the Buyer fulfils his obligations of payment to us, there remains no defect in his capability for the service and we have not asserted our retention of ownership by exercising one of the rights laid down in Para. 3. However, if this is the case, we may request that the Buyer disclose the claim assigned and the debtor in question, make all indications required for collection, surrender the relevant documents, and notify the debtor (third parties) of such assignment of claims. In such a case, we shall additionally be entitled to revoke the Buyer's authorisation to further sale and processing of the goods subject to ownership retention.

(d) Should the realisable value of the existing collateral exceed our receivables by more than 10%, then we shall release the collateral of our choice upon request by the Customer.

§ 7 Claims for Defects by the Buyer

(1) Unless otherwise stipulated in the following clauses, the statutory provisions shall apply for the rights of the Buyer in the event of material and title defects (including incorrect or incomplete delivery and inappropriate assembly or defective assembly instructions). In all cases, the special statutory provisions for the final delivery of the goods to a consumer shall remain unaffected (supplier regress as laid down in §§ 478, 479 BGB).

(2) The basis of our liability for defects shall primarily be the agreement affected regarding the condition of the goods. Agreement on the condition of the goods shall be also determined by the relevant product specifications, which are provided to the Buyer prior to their order or which have been brought into the contract in the same way as these T&C.

(3) In cases where the condition has not been agreed, statutory regulations shall be used to determine whether or not a defect is present (§ 434 Para. 1 p. 2 and 3 BGB). For public sales by the manufacturer or other third parties (e.g. advertising campaigns), however, we do not accept any liability.

(4) The goods sold by us must be diligently inspected by an appropriate agent immediately upon arrival at its destination. Any claims for defects by the Buyer rely upon the prerequisite that the statutory obligations to inspect and provide notice of defects (§§ 377, 381 Para. 2 HGB) have been fulfilled. The obligation to inspect is also present in cases where prototypes and patterns have been despatched. Should a defect become evidence during or after the inspection, then we must be immediately informed thereof in writing. This notification shall be considered immediate if it is provided within two weeks, whereby the date on which it is sent shall be decisive for meeting this deadline. Irrespective of these obligations to inspect and provide notice of defects, the Buyer must declare any obvious defects (including incorrect or incomplete delivery) within a period of two weeks after delivery, whereby the date on which it is sent shall also be decisive for meeting this deadline. Should the Customer fail to conduct the proper inspection and/or provide notice, then our liability for the undeclared defect shall be excluded.

(5) Should the Buyer fail to follow any operational, maintenance or assembly instructions, make changes to the products or exchange any parts, then all claims for defects shall be excluded if the Buyer is unable to correspondingly demonstrate that the defect was not caused by these circumstances. The same shall apply if the equipment is not used according to the placement and construction criteria provided.

(6) Normal deterioration does not trigger any claims for defects. Claims for defects shall also be excluded for damages arising after the transfer of risk as a result of, for example, faulty or negligent handling, excessive demand, use of unsuitable materials for operation, or use of chemical, electrochemical or electrical influences on the part of the Buyer or third parties. The product specifications must always be adhered to in every case.

(7) In the event that the delivered goods are defective, we may initially opt whether to provide subsequent performance by removing the defect (reworking) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent performance as laid down in the statutory provisions shall remain thereby unaffected.

(8) We are entitled to make provision of the respective subsequent performance contingent on whether the Buyer has paid the purchase price due. The Buyer shall however be entitled to withhold an appropriate portion of the purchase price, dependent on the defect.

(9) With PC software or so-called Firmware integrated into the equipment, we shall typically provide the subsequent performance by delivering updated software and/or firmware, which the Buyer must install himself. The obligation to provide subsequent performance for software and firmware is limited to reproducible errors. The Buyer is obliged to accept a new software version if the contractual range of functions remains. Additionally, the regulations specified both above and below shall also apply unreservedly.

(10) The Buyer must allow us the necessary time and opportunity for due subsequent performance and shall in particular hand over the goods concerned for inspection. In the event of substitute delivery, the Buyer must return the faulty object to us according to the statutory provisions. Subsequent performance does not include expanding the defective goods or a reinstallation if we were not originally obligated to perform the installation.

(11) The expenses necessary for the purpose of inspection and subsequent performance, in particular transport, route, work and material costs (not including expansion and assembly costs) shall be borne by us if there is actually a defect. Otherwise, we may demand that the Buyer reimburse us for the costs resulting from an unjustified request to rectify a defect (in particular for inspection and transport costs) unless the lack of defectiveness was not discernible for the Buyer.

(12) Should we render services in the context of the subsequent performance, to which we are not obligated, e.g. carrying out reworking measures upon the request of the Buyer in his locality and outside of our customary business hours, then we may demand remuneration for working hours and travel costs at our standard rates.

(13) In urgent cases, e.g. putting at risk the security of the company or to protect against irregular, unrelated damages, the Buyer shall have the right to remove the defect himself and demand compensation from us based on the objectively necessary expenses. We must immediately be informed of such self-action, if possible in advance. The right to self-action shall not exist if we would be entitled to refuse subsequent performance according to the statutory provisions.

(14) If the subsequent performance is unsuccessful, or a time period to be set by the Buyer for the subsequent performance has passed without success or is dispensable in accordance with the statutory provisions, then the Buyer may withdraw from the contract or reduce the purchase price. In cases of negligible defects, however, there exists no right to withdraw.

(15) Any claims by the Buyer to compensation and/or replacement of futile expenses shall also exist in cases of defects, albeit only in accordance with the measures in § 10, and are otherwise excluded.

§ 8 Third-Party Intellectual Property Rights

(1) Unless otherwise agreed, we shall be liable for ensuring that the contractual object is free from third-party intellectual property rights in Germany in the context of the statutory warranty regulations for title defects. In the event that third parties do assert justified claims in Germany, then we hereby release the Buyer from any claims of intellectual property rights violations. However, as a prerequisite for this release, the Buyer must immediately inform us in writing of the claims that have been asserted and that he does not acknowledge the asserted claims.

(2) Should production of the contractual object conform to a specification provided by the Buyer, then the Buyer hereby guarantees that the contractual products manufactured do not violate any third-party intellectual property rights. Should any third-party intellectual property rights nonetheless be violated, then the Buyer hereby releases us from all compensation claims by third parties.

(3) We shall fulfil our obligation to subsequent performance in cases of title defects by opting ourselves to either:

a) acquire the required licences or

b) deliver an amended contractual object that does not contain the title defect, but which fulfils the contractually agreed purpose in the same way (so-called “work around”).

(4) We hereby notify the Buyer that there may exist a variety of intellectual property rights, which place the use or application of the contractual objects under protection. We accept no liability for ensuring that the concrete nature of use or application of the contractual object, as chosen by the Buyer, does not violate any third-party intellectual property rights. It shall be the sole responsibility of the Buyer to determine prior to using the contractual object whether the use or application desired by the Buyer, and possibly not known to us, affects any third-party intellectual property rights. Should we become subject in such a case to claims made by a third party regarding the violation of intellectual property rights, then the Buyer shall hereby release us from all claims for compensation by third parties.

§ 9 Other Liability

(1) Unless otherwise stipulated in these T&C, including in the following provisions, we shall be liable in cases of violation of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) We shall be liable for compensation - regardless of the legal grounds - in the event of gross negligence and intent. In cases of minor negligence, we shall only be liable pending milder standards of liability in accordance with the statutory provisions (e.g. for diligence in some matters):

a) for losses arising from culpable injury to life, limb or health,

b) for losses arising from the not negligible violation of a substantial contractual obligation (an obligation whose fulfilment is fundamental for the ordinary execution of the contract to be possible, and to which the contractual partner trusts or may trust in our adherence); in such cases, our liability shall nonetheless be limited to the replacement of the foreseeable, typically occurring damages.

(3) The limitations of liability arising from Para. 2 shall also apply in cases of violations of duty, by and/or for the benefit of persons for whose culpability we are responsible in accordance with statutory provisions. They shall not apply insofar as we have fraudulently concealed a defect or accepted a guarantee for the quality of the goods and for the Buyer's claims as laid down in product liability law.

(4) On the grounds of violation of duty that does not arise from a defect, the Buyer may only withdraw from or terminate the contract if we are culpable for the violation of duty. A free right to termination on the part of the Buyer (particularly in accordance with §§ 651, 649 BGB) is hereby excluded. Otherwise, the statutory provisions and legal consequences shall apply.

§ 10 Repairs

(1) The application to agree a repair order shall only become effective when the customer provides us with a written repair order, including a description of the error.

(2) Completion of incomplete despatched equipment may only begin upon the expressed written declaration of the customer in the repair order and will be carried out subject to a charge. Derogating therefrom, faulty parts of the equipment that are required for the equipment to operate safely shall be consistently exchanged subject to a charge.

(3) The issue of the repair order shall only be considered legally binding when we confirm the repair order in writing, thereby accepting it.

(4) The cost of the repairs shall be invoiced by us either according to the estimated flat rate for repairs or according to the actual expenses incurred. For orders with a net order value of less than 50.00 EUR, a small order fee in the amount of 15.00 EUR will be added to the invoice.

§ 11 Confidentiality

Unless otherwise expressly agreed in writing, the information submitted to us in connection with orders shall not be considered confidential.

§ 12 Additional Provisions for Labour Contracts

(1) We shall adhere in writing to the scope of services in the framework of labour contracts in agreement with the customer in the description of services. The description of services must then be confirmed by the customer in writing; the labour contract enters into force with this confirmation. Should the customer enact changes, or should he incorporate additional requirements, then this shall be considered a new offer, which requires our written confirmation.

(2) After the development works have been completed, we shall send a written notification to the customer with a request for clearance of the product. The customer is hereby referred to the two-week period and the legal consequences specified in Figure 3 relating to failure to meet this deadline.

(3) Should no expressed written product and no detailed written specification of the existing defects be provided by the customer within two weeks of this notification being sent, then we shall be entitled to invoice the customer with our demonstrable development costs.

(4) Following delivery of the service works, the customer shall have the opportunity to declare or refuse acceptance of the service works, expressly and in writing, within 14 days of its completion. If no problems are flagged within 14 days of the delivery date, the service works shall be considered accepted. We hereby undertake to inform the customer in an accompanying letter in particular of the consequences of failing to meet the deadline.

§ 13 Additional provisions for software

(1) When purchasing a FEIG product, the purchaser shall be provided by us with software, whether for a fee or free of charge. Software in the aforementioned sense means in particular the embedded software or firmware; this also includes software used for commissioning, maintenance, diagnosis and operation. The software with all associated rights shall remain our property. We grant the Buyer a simple, non-exclusive, revocable, perpetual, worldwide, transferable, free, non-sublicensable right of use for the use of the respective software provided. However, this expressly does not give rise to any claim to disclosure of the respective source code.

(2) The aforementioned software may only be used in conjunction with FEIG products. Any other use, in whole or in part, is prohibited without our prior written consent. The software may not be modified or distributed without our prior written consent. Duplication of the software is also prohibited, unless such duplication is necessary for the use of the respective software and the respective FEIG products or for any backup purposes. This also includes a ban on reverse engineering, in particular the disassembly, testing and examination of the software provided. The reverse translation of the software into the source code is also prohibited.

(3) We shall not be obliged to maintain, update or further develop the software, to provide support and/or, in particular in the event that downloadable software is no longer available, to continue to make it available as a download or by other means. Unless one of the aforementioned actions is necessary to avert a danger to life, limb and health.

(4) Any support services for the software are provided by us on the basis of a separate contract or voluntarily. The customer is not entitled to any support services which - if offered - are provided on a voluntary basis.

§ 14 Redemption of Goods

Should we declare ourselves prepared to redeem goods, this shall only be possible with an RMA number to be collected from each respective customer representative.

§ 15 Statute of Limitations

(1) Derogating from § 438 Para. 1 No. 3 BGB, the general period of limitation for claims arising from material and title defects is one year from delivery. If acceptance is agreed, the statute of limitations shall begin upon acceptance.

(2) In cases relating to a construction or one object of the goods, whose use in accordance with its customary purpose for construction has caused its deficiency (building materials), the period of limitation shall be 5 years from delivery, as laid down in the statutory provision (§ 438 Para. 1 No. 2 BGB). Other specific statutory regulations relating to the statute of limitations shall also remain thereby unaffected (in particular, § 438 Para. 1 No. 1, Para. 3, §§ 444, 479 BGB).

(3) The above periods of limitation of sales law shall also apply for contractual and non-contractual compensation claims from the Buyer which relate to a defect in the goods, unless the application of the regular mandatory statute of limitations (§§ 195, 199 BGB) would lead to a shorter statute of limitations in the respective individual case. Compensation claims of the Buyer as laid down in § 8 Para. 2 Clause 1 and Clause 2(a), and as laid down in Product Liability Law shall exclusively expire after the statutory periods of limitation.

§ 16 Place of Jurisdiction and Governing Law

(1) For these T&C and all legal relationships between us and the Buyer, the law of the Federal Republic of Germany shall apply under exclusion of international uniform law, in particular the UN Sales Convention.

(2) If the Buyer is a businessman within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the sole - including international - place of jurisdiction for all disputes arising from the contractual relationship shall be our registered office in Weilburg. The same shall apply if the Buyer is a contractor within the meaning of § 14 BGB. We are also authorised in all cases, however, to take action at the place of fulfilment of the delivery obligation according to these T&C or a prevailing individual agreement or at the general place of jurisdiction of the Buyer. Prevailing statutory provisions, in particular with respect to exclusive jurisdiction, shall remain thereby unaffected.