

Terms and Conditions for Sale and Delivery of Standard Products



§ 1 Scope

These Terms and Conditions for Sale and Delivery apply to all sales contracts of FFT Produktionssysteme GmbH & Co. KG (hereinafter "Supplier") and to mediation transactions of FFT Products GmbH concerning the delivery of standard products and thus related services provided to a customer that meets the definition of a registered merchant within the meaning § 14 of the German Civil Code (BGB), a legal entity under public law or a public-law special fund ("Purchaser"). If the Terms and Conditions for Sale and Delivery of Standard Products do not contain any provisions, then the Terms and Conditions of FFT Produktionssysteme GmbH & Co. KG valid at the time the contract is entered into, shall apply.

§ 2 General provisions

- These Terms and Conditions for Sale and Delivery of Standard Products ("GTSDSP") shall apply exclusively to the legal relationships between Supplier and Purchaser in connection with the Supplier's goods and/or services (hereinafter deliveries). The Purchaser's terms and conditions shall only apply, insofar as the Supplier has expressly agreed to them in writing. Reciprocal, concordant written declarations shall be authoritative for the scope of the deliveries.
- The Supplier reserves the unrestricted property rights and copyrights in respect of use and exploitation of cost estimates, drawings and other documents (hereinafter documents). The documents shall only be made accessible to third parties after prior consent of the Supplier, and if the order is not placed with the Supplier, shall be returned to the Supplier on request without delay. Sentences 1 and 2 shall apply accordingly for the Purchaser's documents: However the Purchaser's documents may be made accessible to third parties, to whom the Supplier has permissibly entrusted goods and services.
- The Purchaser shall have the non-exclusive right to use standard software and firmware with the agreed performance features in unmodified form on the agreed devices. The Purchaser shall also be entitled to create a backup copy of the standard software without express agreement.
- Partial deliveries shall be permitted, insofar as they are reasonable for the Purchaser.
- In these Terms and Conditions for Sale and Delivery of Standard Products, the term, claims for damages, shall also include reimbursement of expenses incurred in vain.

§ 3 Prices, payment terms and offsetting

- The prices shall be quoted ex works, exclusive of packaging statutory value-added tax.
- If the Supplier is responsible for set-up or assembly and if nothing to the contrary is agreed, then in addition to the agreed remuneration, the Purchaser shall also bear all required additional costs, such as costs for travel, transport and daily allowances.
- Payments shall be made free of all charges to the Supplier's address of payment.
- The Purchaser shall only be entitled to offset with such receivables that are undisputed or that have been legally established.

§ 4 Retention of title

- The delivery items (retained goods) shall remain the property of the Supplier until all claims against the Purchaser arising from the business relationship, to which the Supplier is entitled, are satisfied. If the value of the collateral rights to which the Supplier is entitled, exceeds the amount of all secured claims by more than 20%, on Purchaser's request, the Supplier shall release an appropriate portion of the collateral rights. For such release, the Supplier shall be entitled to choose from various collateral rights.
- For the duration of retention of title, the Purchaser shall not pledge the retained goods or use them as security; resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its payment obligations.
- If the Purchaser resells the retained goods, the Purchaser shall assign, at this time, to the Supplier any future claims arising from the resale to its customers, together with all ancillary rights – including any payment balance demands – without the necessity of any further special declarations. If the retained goods are resold together with other items without declaring a unit price for the retained goods, then the Purchaser shall assign to the Supplier that portion of the overall price demand that equals the value of the retained goods invoiced by the Supplier.
- The Purchaser shall be entitled to process, mix or combine the retained goods with other items. The processing shall occur for the Supplier. The Purchaser shall store the resulting new item for the Supplier with the diligence of a prudent businessman. The new item shall be considered as retained goods.
 - The Supplier and Purchaser shall agree that if the retained goods are combined or mixed with other items that do not belong to the Supplier, the Supplier shall be entitled to co-ownership of the new item at the proportionate amount, that arises from the ratio of the value of the combined or mixed retained goods to the value of the remaining goods on the date the retained goods are combined or mixed. Insofar the new item shall be considered as retained goods.
 - The provision concerning assignment of claim in no. 3 shall also apply to the new item. Such assignment shall only apply up to the amount that equals the amount invoiced by the Supplier for the retained goods that have been processed, combined or mixed.
 - If the Purchaser combines the retained goods with land or movable items, the Purchaser shall also assign the payment to the Supplier, without the necessity of further special declarations, to which the Supplier is entitled as remuneration for the combination with all ancillary rights, in the amount of the ratio of the value

of the retained goods to the value of the other combined goods at the time of combination.

- The Purchaser shall be entitled to collect assigned claims arising from the resale until such authorization is revoked. If cause is present, in particular in the event of default of payment, suspension of payment, opening of insolvency proceedings, bill protest or substantiated indications of over-indebtedness or imminent insolvency, the Supplier shall be entitled to revoke the Purchaser's direct-debit authorization. Moreover, after giving prior warning of impending disclosure and after complying with a reasonable period of notice, the Supplier shall be entitled to disclose the assignment for security, use the assigned receivables, and demand that the Purchaser disclose the assignment to the customer.
- The Purchaser shall be obligated to notify the Supplier without delay in the event of seizures, attachments or other third-party disposals or interventions. If a justified interest should be established, the Purchaser shall provide the Supplier with the information required to enforce the claims against the customer and hand over the necessary documents.
- In the event of breach of obligation on the part of the Purchaser, in particular in the event of default of payment, after an appropriate grace period granted to the Purchaser for performance elapses to no avail, the Supplier shall be entitled to not only take back the delivery but also to withdraw from the contract; said grace period shall not affect the statutory provisions concerning the expensibility of setting a grace period. The Purchaser shall be obligated to surrender the goods. Take back of the goods or assertion of reservation of title or the seizure of the retained goods on the part of the Supplier, shall not constitute withdrawal from the contract unless expressly stated by the Supplier.

§ 5 Time limits for deliveries; default

- The prerequisites for compliance with time limits for deliveries are, timely receipt of all documents, required permits and approvals, in particular plans, that must be provided by the Purchaser, as well as compliance with the agreed payment terms and other obligations on the part of the Purchaser. If these prerequisites are not met in a timely manner, then the time limits for deliveries shall be extended accordingly; this shall not apply if the Supplier is not responsible for the delay.
- If failure to comply with the time limits for deliveries is attributed to
 - force majeure, e.g. mobilization, war, acts of terrorism, riot, or similar events, (e.g. strike, lock out),
 - virus attacks and other third-party attacks on the Supplier's IT system, if such attacks occurred in spite of compliance with the customary diligence required for protective measures.
 - Obstructions due to German, US, or other applicable national, EU, or international foreign trade regulations, or due to other circumstances for which the Supplier is not responsible, or
 - improper or delayed delivery on the part of the Supplier,the time limits for delivery shall be appropriately extended.
- If the Supplier is in default with delivery, the Purchaser shall be entitled to demand – provided Purchaser can prove that damage has been incurred as a result thereof – compensation of 0.5% for every full week of default, however maximum 5% of the price for the portion of the deliveries that could not be appropriately used due to the default in delivery.
- Claims for damages on the part of the Purchaser, due to the delivery delay, as well as claims for damages in lieu of performance, which exceed the limits cited in no. 3, shall be excluded in all cases of delayed delivery, even after expiration of a time limit for delivery that may have been set for the Supplier. This shall not apply in cases of liability due to malicious intent or gross negligence or arising from wrongful death, personal injury or health impairment. The Purchaser shall only be entitled to withdraw from the contract within the context of legal regulations, if the Supplier is responsible for the delivery delay. The provisions cited above do not constitute any change in the burden of proof to the disadvantage of the Purchaser.
- On Supplier's request, within a reasonable time limit, the Purchaser shall be obligated to declare whether, due to the delay of the delivery the Purchaser withdraws from the contract or insists on the delivery.
- If, at the Purchaser's request, dispatch or delivery is delayed by more than one month after notification of readiness to dispatch, the Supplier shall be entitled, for each month that has begun, to bill the Purchaser for storage fees amounting to 0.5% of the price of the delivery items, but not more than 5% in total. However, the Contracting Parties shall be entitled to provide proof of higher or lower storage costs.

§ 6 Transfer of risk

- Risk shall transfer to the Purchaser, even for freight-paid delivery, as follows:
 - in the event of delivery without set-up or assembly, if the order has been delivered or collected for shipment. On request of, and at the expense of the Purchaser, the delivery is insured by the Purchaser against the usual transport risks.
 - in the event of set-up or assembly on the day of hand over at the Purchaser's own site, or if agreed, after successful trial operation.
- If dispatch, delivery, commencement, execution of set-up or assembly, acceptance at the Purchaser's site or trial operation is delayed due to reasons for which the Purchaser is responsible, or if the Purchaser delays acceptance for other reasons, the risk shall transferred to the Purchaser.

§ 7 Set-up and assembly

If nothing to the contrary is agreed in writing, the following provisions shall apply to set-up and assembly:

- The Purchaser shall be obligated to undertake, at his expense and to provide in a timely manner:

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- a) all earth works, construction work and other ancillary tasks that do not fall within the scope of work in this sector, including any necessary specialists and auxiliary workers, building materials, and tools;
 - b) the commodity goods and consumables, such as scaffolds, lifting gear, and other fixtures, fuels, and lubricants required for assembly and commissioning;
 - c) energy and water at the place of use, including the connections, heating, and lighting;
 - d) sufficiently large, suitable, dry and lockable rooms at the assembly site to store machine components, apparatus, materials, and tools, etc., and suitable workrooms and staffrooms for assembly personnel, including sanitary facilities appropriate for the circumstances; moreover, the Purchaser shall be obligated to take those measures on the construction site for protection of the assets of the Supplier and the Supplier's assembly personnel that the Purchaser would take to protect his own assets.
 - e) protective clothing and protective devices that are required due to the particular circumstances of the assembly site.
2. Prior to starting the assembly tasks, the Purchaser shall be obligated to provide, without solicitation, the necessary information concerning the position of concealed power, gas, and water lines or similar installations, as well as the required statics information.
 3. Prior to commencing the set-up or assembly, the customer-provided materials and objects required for commencing the tasks must be at the assembly site and all preliminary tasks prior to commencing erection, must be sufficiently advanced that set-up or assembly can begin as agreed, and can be executed without interruption. Approach routes and the set-up or assembly site must be levelled and cleared.
 4. If set-up, assembly or commissioning is delayed due to circumstances, for which the Supplier is not responsible, then the Purchaser shall bear the costs for wait time, any travel additionally required of the Supplier or of the assembly personnel, in an appropriate scope.
 5. The Purchaser shall be obligated to certify weekly to the Supplier, without delay, the duration of the work time of assembly personnel, as well as conclusion of set-up, assembly or commissioning.
 6. If after completion, the Supplier demands acceptance of the delivery, then the Purchaser shall be obligated to undertake the acceptance procedure within two weeks. If the Purchaser allows this two week time limit to elapse to no avail, or if the delivery, possibly after conclusion of an agreed test phase, is placed in service, this shall be deemed as equivalent to acceptance.

§ 8 Receiving

The Purchaser shall not refuse to receive deliveries due to negligible defects.

§ 9 Material defects

The Supplier shall be liable for material defects as follows:

1. All parts or deliveries that show material defects, if the cause was present at the time of transfer of risk, shall either be repaired or newly provided at no charge, at the discretion of the Supplier.
2. Claims for supplementary performance shall become statute-barred within 12 months of the statutory commencement of limitation; the same shall apply to withdrawal from the contract or demands for reductions. This time limit shall not apply:
 - If the law as stipulated in §§ 438(1)(2) BGB (Building structures and components for structures) and 634a(1)(2) BGB (Construction defects) prescribes longer time limits,
 - in the case of intent,
 - in the case of fraudulent concealment of the defect, and
 - in the case of failure to comply with the condition guarantee.
3. Claims for reimbursement for expenses on the part of the Purchaser, in accordance with 445a BGB (recourse of the seller) shall likewise become statute-barred in 12 months, starting from legal commencement of the limitation, with the prerequisite that the last contract in the supply chain must not be for purchase of consumer goods. The statutory regulations concerning expiry suspension, suspension, and restart of time limits, shall remain unaffected.
4. Notifications for defects on the part of the Purchaser must be submitted in writing without delay.
5. If there are notifications of defects, the Purchaser shall be entitled to withhold payments in a proportion that corresponds to the material defects that occurred. A right of retention on the part of the Purchaser shall not exist if the Purchaser's claims for defects are statute-barred. If the notification of defects occurred unlawfully, the Supplier shall be entitled to demand compensation from the Purchaser for the expenses that the Supplier incurred.
6. The Purchaser shall be obligated to grant the Supplier an appropriate time limit for supplementary fulfillment.
7. If supplementary fulfillment fails, the Purchaser – without prejudice to any claims for damages, shall be entitled, in accordance with clause 11, to withdraw from the contract or reduce remuneration.
8. Claims for defects do not exist in the case of only minor deviations from the agreed quality, minor impairment of usability, natural wear or damages incurred after transfer of risk, due to faulty or negligent handling, excessive load, unsuitable operating equipment, faulty construction work, unsuitable subsoil, or due to special external influences that are not specified as preconditions in the contract, or if there are nonreproducible software errors. If the Purchaser or third parties have undertaken improper modifications, installation/removal or repair tasks, then claims for defects for these tasks and the resulting consequences, likewise do not exist.
9. Claims of the Purchaser with regard to expenses necessary for the purpose of supplementary performance, shall be excluded if expenses increase because of

the subsequent transport of the delivered item to a location other than the Purchaser's site, unless the transfer corresponds to the delivered item's intended use. This shall apply accordingly for expenses incurred by the Purchaser, in accordance with 445a BGB (recourse of the seller), with the prerequisite that the last contract in the supply chain must not be for purchase of consumer goods.

10. Recourse claims on the part of the Purchaser against the Supplier in accordance with § 445a BGB (Recourse of the Seller) shall only apply, insofar as the Purchaser has not entered into any further agreements with Purchaser's customer that extend beyond the statutory claims for defects.
11. Claims for damages on the part of the Purchaser due to a material defect shall be excluded. This shall not apply in cases of malicious concealment of the defect, failure to comply with the condition guaranty, of wrongful death, personal injury or health impairment. The provisions cited above do not constitute any change in the burden of proof to the disadvantage of the Purchaser. More extensive claims on the part of the Purchaser or claims other than those regulated in this Section 9 due to material defect shall be excluded.

§ 10 Industrial property rights and copyright; defects of title

1. Unless otherwise agreed, the Supplier shall be obligated to provide the delivery only in the country of the delivery location, without infringing industrial property rights or copyrights of third parties, (hereinafter property rights). Insofar as a third party asserts justified claims against the Purchaser due to the infringement of property rights and copyrights through deliveries provided by the Supplier, which are used as specified in the contract, the Supplier shall be liable within the time limit stated in Clause 9 no. 2 as follows:
 - a) the Supplier shall at Supplier's discretion and Supplier's expense, either obtain a right of use for the deliveries in question, change the delivery in question in such a manner that the property right and right of use are not infringed, or replace the delivery in question. If this is not possible for the Supplier under reasonable conditions, the Purchaser shall be entitled to the statutory right of withdrawal or right of reduction.
 - b) the Supplier's obligation to provide compensation for damage shall be governed by Clause 12.
 - c) the Supplier's obligations cited above shall only exist, if the Purchaser has notified the Supplier in writing, without delay of the claims asserted by the third party, does not acknowledge an infringement, and all defense and defense measures and settlement negotiations remain reserved for the Supplier. If the Purchaser suspends use of the delivery for reasons of minimizing damages or other important reasons, the Purchaser shall be obligated to inform the third party that suspension of use does not constitute any acknowledgement of infringement of a property right.
2. Claims on the part of the Purchaser shall be excluded, if the Purchaser is responsible for the infringement of the property right.
3. Claims on the part of the Purchaser shall be further excluded, insofar as the infringement of property right or copyright is caused through special stipulations of the Purchaser, through an application which was not foreseeable by the Supplier, or due to the fact that the delivery is changed by the Purchaser or used together with products that were not delivered by the Supplier.
4. In the event of property right infringements, claims on the part of the Purchaser regulated in paragraph 1a) shall apply, in all other respects the provisions of Section 9, numbers 4, 5, 8, and 9 shall apply accordingly.
5. If other defects of title are present, the provisions of Section 9 shall apply accordingly.
6. More extensive claims, or claims against the Supplier and his vicarious agents for defect of title, other than those claims on the part of the Purchaser regulated in Section 10, shall be excluded.

§ 11 Reservation of fulfillment

1. Contractual fulfillment shall be subject to the condition that the fulfillment is not prevented by any impediments arising from national or international foreign trade legislation or by any other sanctions.
2. The Purchaser shall be obligated to provide all information and documents that are necessary for export, transfer or import.

§ 12 Impossibility, contract amendment

If delivery is impossible, the Purchaser shall be entitled to demand compensation for damages, unless the Supplier is not responsible for the impossibility. However, the Purchaser's claim for compensation for damages shall be limited to 10% of that part of the delivery that cannot be used appropriately due to the impossibility. This limitation shall not apply in cases of liability due to intent or gross negligence, or arising from wrongful death, personal injury or health impairment; this shall not constitute any change in the burden of proof to the disadvantage of the Purchaser. The Purchaser's right to withdraw from the contract shall remain hereby unaffected. If events stipulated in Section 5, paragraph 2 a) to c) considerably change the economic significance or the content of the delivery or have significant impact on the Supplier's operations, the contract shall be appropriately amended in good faith. If this is not economically justifiable, the Supplier shall be entitled to withdraw from the contract. The same shall apply if required export permits are not granted or cannot be used. If the Supplier desires to exercise this right of withdrawal, then the Supplier must inform the Purchaser of this circumstance, without delay after becoming aware of the consequences of the event, and also if an extension of the delivery time has been agreed with the Purchaser, beforehand.

§ 13 Other claims for damages

1. If not otherwise provided for in these Terms & Conditions for Sale and Delivery of Standard Products, claims for damages on the part of the Purchaser, regardless of the legal grounds, in particular due to breach of obligations arising from the contract and from unlawful acts, shall be excluded.

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2. This shall not apply in cases of liability:
 - a) in accordance with the Product Liability Act
 - b) in the case of intent,
 - c) in the case of gross negligence on the part of owners, legal representatives or company executives,
 - d) in the case of fraudulent intent
 - e) for failure to comply with an accepted guarantee,
 - f) due to culpable wrongful death, personal injury or health impairment, or
 - g) due to culpable breach of material contractual obligations.However, the claim for compensation of damages for breach of material contractual obligations, shall be limited to the foreseeable damage that is typical for the contract, unless one of the cases cited above is present.
3. The provisions cited above do not constitute any change in the burden of proof to the disadvantage of the Purchaser.

§ 14 Place of jurisdiction and applicable law

1. If the person making the claim is a business person, the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the court with jurisdiction for the Supplier's registered office. However the Supplier shall also be entitled to bring suit at the court with jurisdiction for the Purchaser's registered office.
2. This contract including its interpretation shall be subject to German Law with exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

§ 15 Legal validity of the contract

The legal invalidity of one or more provisions of this contract shall in no way affect the validity of the remaining provisions. This shall not apply if adherence to the contract would constitute undue hardship for either Party.