

General Terms and Conditions of Purchasing

I. Scope of Application

The following Terms and Conditions shall apply exclusively in all cases to all legal relationships between Fr. Fassmer GmbH & Co. KG (hereinafter referred to as Purchaser) and the Supplier, including any future orders. Any opposing terms and conditions of the Supplier or any such that deviate or extend beyond these Terms and Conditions shall not apply, unless the Purchaser should give its explicit written consent thereto. The following Terms and Conditions shall also apply exclusively in cases in which the Purchaser, being aware of terms and conditions of the Supplier that oppose or deviate from these Terms and Conditions nonetheless accepts the delivery without reservation or objection.

All agreements between the Purchaser and the Supplier and any amendments and supplements to such agreements require the written form. This also applies to the written form requirement itself.

II. Quotations

When compiling its quotations, the Supplier shall be required to adhere exactly to the inquiry and, in the event of any deviations, to explicitly draw attention to these. The preparation of quotations on the part of the Supplier shall be free of charge and shall not constitute any obligation whatsoever on the part of the Purchaser. The Supplier shall be bound to its quotation for a period of two months unless it should specify a different period upon submitting said quotation.

III. Orders

Only written orders shall be valid. Oral orders or orders placed by telegraph, as well as any side agreements and subsequent amendments shall only be binding if and inasmuch as they are confirmed by the purchaser in writing.

IV. Place of Fulfilment

The place of fulfilment for both parties is the business domicile of the Purchaser in D-27804 Berne-Motzen. Should a different destination point be provided for in the case of a particular delivery or service then said destination point shall be deemed the place of fulfilment for the respective service of the Supplier. In the event of the rectification of defects, for example, Ship/Shipyard shall be deemed to have been agreed worldwide.

V. Prices

1.) All prices or unit prices quoted in the order are fixed prices and are to be understood, inasmuch as nothing to the contrary has been explicitly agreed in writing, to be in Euros excluding VAT.

2.) The prices agreed exclude any extra demands whatsoever, e.g. due to wage increases or increases in material prices, particular circumstances at a building site, technical improvements or similar. The prices are valid for all suppliers within the European Union acc. DAP Incoterms 2010 and for suppliers outside the European Union acc. DDP Incoterms 2010 for the named destination, including packaging and transport insurance (to be concluded by the supplier) including crane / forklift risk without interruption until depositing at the place of installation. The prices also include, without the need to make separate mention hereof, all properties, components and fixtures belonging to the item ordered according to state-of-the-art technological standards and which have not been explicitly exempted. Should the Purchaser, in exceptional cases, itself assume the costs of dispatch or insurance the Supplier shall be required, inasmuch as no particular instructions have been issued, to ensure the most favourable shipment and insurance. The place of fulfilment shall not be affected hereby.

3.) Collection costs, in particular any such that result from the presentation of documents, shall be charged to the account of the Supplier.

VI. Implementation Regulations

The binding drawings and piece lists of the Purchaser shall be decisive for implementation. Amendments to the Purchaser's drawings and any deviations from the same or from any specifications issued by the Purchaser, in particular with regard to the materials, treatments and any other manufacturing processes may only be undertaken with the prior written consent of the Purchaser.

VII. Amendments

The Purchaser reserves the right to demand amendments. The acceptance of any amendments whatsoever is to be confirmed to it by the Supplier in writing. The Purchaser shall have a claim of any decrease in price that might result. The Supplier shall only be able to claim increased prices on the grounds of amendments should it have demanded these prior to the implementation of the amended service and the Purchaser has agreed to them in writing.

VIII. Involvement of Third Parties

The obligations entered into by the Supplier may not be transferred to third parties without the prior written consent of the Purchaser. Should such consent be granted, the Supplier shall be liable for the orderly fulfilment of the obligations assumed by the third party. The Supplier shall be liable for its sub-suppliers and sub-contractors in accordance with the criteria of Section 278 BGB (German Civil Code). Manufacturing and other tasks that the Supplier is able to implement itself may not be awarded to third parties without the explicit prior written consent of the Purchaser.

IX. Delivery and Manufacturing Deadlines

1.) Delivery and manufacturing deadlines shall be calculated from the day of the order and are fixed deadlines.

2.) Inasmuch as the Supplier is under an obligation to effect turnkey assembly the trial operation and subsequent final commissioning must take place within the deadline for completion.

3.) Should the Supplier be unable to comply with the deadline for delivery or completion it must inform the Purchaser hereof without delay stating the reasons for and the probable duration of the overstepping of the delivery deadline even if the delay should be for reasons for which the Supplier does not bear the responsibility. Should the Supplier violate this obligation it shall be liable also for

an overstepping of the delivery deadline for which it does not bear the responsibility according to the following Point 4.

4.) Should the delivery or completion deadline not be adhered to the Supplier shall be liable for all losses suffered by the Purchaser as a result. In addition, the statutory regulations shall apply to liability. Any contractual penalty that might have been agreed in the event of belated delivery is not to be offset against the compensation claims of the Purchaser. By way of deviation from Section 341 Para. 3 BGB the contractual penalty shall also be payable should no reservation have been expressed by the Purchaser at the time of acceptance of the delivery.

X. Cancellation on the Part of the Purchaser

Should the Purchaser exercise either a statutory or contractual cancellation option the Supplier shall receive that part of the price that corresponds to the costs that it has verifiably incurred. The Supplier shall not be entitled to demand compensation for lost profits. This shall also apply in the event of a partial cancellation. The assertion and offsetting of compensation claims by the Purchaser shall be neither excluded nor restricted hereby.

XI. Notification of Dispatch and Issuing of Invoice

1.) Notifications of dispatch are to be sent to the Purchaser immediately on the day of dispatch in triplicate thereby quoting the order and contract number, the date of the order and the gross and net weights. The dispatch is to be evidenced by way of a duplicate of the dispatch note.

2.) Losses and costs that are incurred as a result of failure to observe the packaging and dispatch instructions of the Purchaser shall be borne by the Supplier.

3.) An invoice for the total scope of an order is to be issued in triplicate, thereby declaring VAT separately. Should services be settled according to measurements or amount of work, all documents necessary for the orderly auditing of the invoice (lists of measurements or time sheets confirmed by the Purchaser) must be enclosed therewith. As long as these documents are not available in full, the invoice amount shall not mature for payment.

XII. Payment

1.) Provided nothing to the contrary is stipulated in the order letter, payment shall be effected by way of payment methods selected by the Purchaser 14 days subsequent to the delivery and/or service and maturity of the invoice thereby deducting a 3 % early payment discount or after 45 days net. In the event of a premature delivery or service this period shall be calculated from the agreed delivery date.

2.) For advance payments to be effected by the Purchaser bank sureties to the latter's satisfaction must be provided by the Supplier with a running term until the complete fulfilment of the delivery or service performance obligation. Until these have been provided, the advance payment shall not become due. Agreed delivery deadlines or deadlines for completion shall not be affected by this.

XIII. Claims for Defects, Liability, Notification of Defects

1.) The Supplier shall be liable for the impeccable character and suitability of the item of delivery for its usual and, according to the order, intended purpose as well as for the fact that the item of delivery has the guaranteed properties as well as those properties, components or fixtures that are necessary according to state-of-the-art technology as well as all statutory and official provisions valid at the time of delivery included the safety and prevention of accidents stipulations.

2.) Claims based on defects shall fall under the statute of limitations within a period of 24 months + 30 days reporting deadline but at the very latest 30 months subsequent to delivery by the supplier. It shall commence after final acceptance of the ship by the final customer. The statutory limitation period shall commence from that point in time at which the object of delivery or the entire plant, should the object of delivery be intended as part of any such, has finally been taken into operation by the purchaser or its customer subsequent to a successful trial run. In the case of supplies and services for ships the statutory limitation period shall commence upon the ship being delivered by the purchaser to the client or, in the case of repairs to a ship, from the time when said ship resumes operations. The statutory limitation period shall be suspended by the complaint about defects or demand for post-fulfilment in accordance with Point 4 or the declaration of rescission or request for a reduction in accordance with Point 5. In the event of a demand for post-fulfilment the period shall only recommence after the supplier has refused post-fulfilment in writing or declared that it has been completed.

3.) Should the item of delivery not comply with the requirements as under Point 1 the Purchaser, at its own discretion, may demand post-fulfilment both by way of the free replacement of faulty parts or free repair in situ as well as by way of the delivery of an impeccable item. The Supplier shall in every case bear all costs of post-fulfilment including transport, travel and work costs, also if post-fulfilment has to be implemented in foreign ports or at sea. For the parts replaced or repaired by the Supplier the statute of limitations shall commence anew from the resumption of operations.

4.) The Purchaser shall be entitled, in lieu of post-fulfilment, to withdraw from the contract or demand a reduction should the Supplier be in default regarding post-fulfilment or should the same or any other defect reveal itself subsequent to post-fulfilment or a new delivery. An immediate notification of defects shall not be required in the case of unsuccessful post-fulfilment.

5.) The Supplier shall in every case be liable – even if not itself to blame – for all losses suffered as a result of the defect or of the lack of guaranteed properties.

6.) Should the supplier be in default the Purchaser may demand a contractual penalty amounting to 0.3 % of the net price per calendar day, but in total no more than 5 % of the net price of the contractual product delivered too late, however. The purchaser shall be entitled to demand the contractual penalty in addition to fulfilment and as a minimum amount of any compensation owed by the supplier under the statutory regulations; the right to assert further reaching claims for compensation shall remain unaffected by this. Any contractual penalty accrued may be asserted by the purchaser until the maturity of the price invoiced for the contractual product in a due and proper manner in accordance with Figure.

XIV. Industrial Property Rights

1.) The Supplier shall also be liable for all losses that are incurred by the Purchaser or its client due to the fact that the use or sale of the delivery or service violates the industrial property rights of third parties. The Supplier is under an obligation to hold the Purchaser and its customers harmless from all third party claims in this connection.

2.) Should the Supplier create any drafts, drawings, illustrations, models or any other presentations for the Purchaser, the latter shall

acquire a temporally unrestricted, exclusive and free right of usage thereto upon the handing over of any such items to it. The Supplier gives its consent at this time already to the transfer – also in return for a fee – of this right to third parties by the Purchaser. This shall also apply should the creation of the drafts, drawings, etc. represent the main service performed by the Supplier.

XV. Drawings, Inspections

1.) All drawings, technical data and information made accessible to the Supplier by the Purchaser or its appointed agent are to be kept secret and returned unasked after the order has been completed. They may be used by the Supplier only for the execution of the delivery but not for any other purposes.

2.) Should, for the purpose of implementing the order, the creation of drawings or other documents in addition to the drawings and data provided by the Purchaser by required the Supplier shall assume this task without any separate remuneration. The drawings are to be handed over to the Purchaser free of charge after completion.

3.) The Supplier shall furthermore be under an obligation to hand over to the Purchaser upon acceptance of the delivery all necessary technical documents such as operating instructions, drawings, etc., and to do so in their latest versions and, if necessary, in the foreign language desired by the Purchaser.

4.) Inasmuch as nothing to the contrary should be explicitly demanded, the relevant DIN norms, VDE (German Electrical Engineers' Association) and VDI (German Engineers' Association) plus the safety regulations of the German authorities and professional associations are to be heeded with regard to all deliveries and services. In the cases of delivery items subject to an official acceptance obligation, boilers, pressure containers, etc. the Supplier shall be required to occasion at its own costs the undertaking of the construction and pressure tests by the TÜV and to present the prescribed test certificate prior to the start-up of operations.

5.) The Supplier shall guarantee, at least for the period of the delivery item's standard working life the supply of spare parts at standard market conditions and prices.

6.) The Purchaser reserves the right to inspect the items of delivery on the Supplier's premises during the manufacturing thereof or prior to the dispatch thereof. The inspection may cover the quality of the materials used, the preciseness of the measurements and the other qualities of the manufactured parts as well as adherence to the manufacturing specifications. The Supplier shall be obliged to enable the Purchaser to take the measures necessary for any such inspections. Such inspections shall not constitute acceptance, however, and do not affect the Supplier's fulfilment and post-fulfilment obligations.

XVI. Reservation Of Proprietary Rights

The Supplier undertakes to deliver the goods and materials free of any third party rights. In the event of a reservation of proprietary rights on the part of the Supplier the Purchaser shall be entitled to dispose of the goods in the course of its normal business operations.

XVII. Product Liability

1.) Should any claims be asserted against the Purchaser for compensation due to a product defect – irrespective of the legal basis thereof – the Supplier shall be required to hold the Purchaser harmless against this inasmuch as the product defects to be attributed to the fact that the Supplier's service was inadequate or itself afflicted with a product defect.

2.) Should such a product defect be identified the Supplier shall, also in cases in which no loss has as yet been suffered, be obliged to implement at the demand of the Purchaser all measures necessary for the possible rectification of the product defect at its own costs. Point XIII 4.) shall apply analogously.

3.) The claims arising against the Supplier from Point XVII 1.) and 2.) shall also apply in cases in which claims for defects based upon that defect that was the cause of the product defect should already have fallen under the statute of limitations.

XVIII. Unforeseen Occurrences

Without prejudice to any further reaching rights of withdrawal or cancellation the Purchaser shall be entitled to rescind the contract inasmuch as the intended use of the delivery or service should become impossible or unreasonable on economic grounds for the Purchaser.

XIX. Assignment of Claims

Any claims held by the Supplier against the Purchaser may only be assigned with the prior written consent of the latter to any third parties.

XX. Court of Jurisdiction

For both parties, the exclusive court of jurisdiction, also for law suits within the cheque, bill of exchange and title deed process, is Bremen, inasmuch as the Supplier is a registered trader. The Purchaser shall, however, be entitled to sue the Supplier at the courts responsible for its business domicile.

The law of the Federal Republic of Germany shall be exclusively applicable to the legal relationships between the Supplier and the Purchaser. The application of the UN Convention on the International Sale of Goods (CISG) is ruled out.

(As of July 2019)