

Terms and Conditions of Purchase of FIMA Maschinenbau GmbH

1. General

Orders and purchases shall be issued solely in accordance with our Terms and Conditions of Purchase unless explicitly stated otherwise in our orders. As part of a current or recurring business relationship in the trade, these Terms and Conditions of Purchase shall become part of the contract, even if FIMA Maschinenbau GmbH does not explicitly refer to their inclusion. At no time will other sales and delivery terms of the supplier become part of the contract. This shall also apply even if they are not explicitly objected to, or the delivery is unconditionally accepted.

2. Performance description

(1) The supplier shall manufacture the product ordered and/or perform the service ordered in compliance with the relevant technical documents and/or other documents.

(2) The contractually agreed performance must be performed in compliance with the relevant acknowledged rules of engineering and relevant DIN, VDE, VDI or comparable standards. The rules, standards and legal provisions in Germany and at the specified place of delivery or place of final destination shall prevail.

(3) The statutory provisions for machinery, technical equipment, accident prevention, occupational safety, environmental protection etc. shall be observed.

(4) The supplier pledges to maintain a recognised quality management system for the services to be rendered under this agreement.

(5) The supplier shall bear full responsibility for the production of tools, devices and other equipment insofar as they are required for the manufacture of the product, also if they entrust a third party with their production.

(6) The supplier shall provide full documentation for the contractual product in electronic and paper format. The documentation shall be sent in German and English specifying the order reference to dokust@fima.de. Documentation must comply with the acknowledged rules of engineering and the relevant standards and statutory provisions at the time of manufacture (in particular, the EG machinery directive insofar as it is applicable).

(7) If the order contains developments, designs, drafts or similar services, the supplier pledges to submit all results, in particular design and production drawings, documentation, user manuals etc. in electronic and paper format respectively, at the latest on delivery or on an appointed date

confirmed in writing. We shall hold the exclusive copyright and rights of exploitation to development, designs, drafts and similar services.

(8) Software shall be supplied on commercially available data carriers in machine-readable object program format, along with application documentation in electronic and paper versions. Insofar as agreed, when developing software the scope shall also include supplying software on commercially available data carriers in machine-readable source program format, and the program development documentation in electronic and paper versions, and manufacturer documentation; this shall also apply to subsequent changes and updates. The source program shall be supplied in the prescribed programming language with detailed comments. Comments shall be supplied in the prescribed national language. Technical terms prescribed by us must be used. Source and object programs and documentation shall be handed over on acceptance, and be of the same status as the program at the time of acceptance. Insofar as software is subsequently adjusted or updated, source and object programs and documentation shall also be supplied without being requested to do so. The respectively current source and object programs may be requested by the customer at any time. We shall hold the exclusive copyright and exploitation rights to software developed for us.

3. Orders

(1) Orders and other declarations are only binding if they are placed or confirmed online or in writing by us.

(2) In the event that our orders are not confirmed within eight days of submission specifying a binding delivery date, we reserve the right to cancel the order without any obligation on our part.

(3) Tenders and quotations shall be binding and free of charge.

(4) Unless agreed otherwise, delivery shall be performed at the supplier's cost and risk. Transfer or risk shall take place on acceptance of the goods at the place of delivery. Shipping shall be performed to the place of delivery stipulated by us.

(5) The delivery must be accompanied by a delivery note and each package an itemised list with our order references. The delivery note and itemised list must specify quantities and clearly identify the supplied parts. For identification purposes, the delivered parts must also be marked accordingly. If a package consists of identical parts, specification on the package is sufficient. Parts produced according to a drawing must be accompanied by a signed dimensional data sheet.

(6) If the delivery notes or package contents list is missing, we reserve the right to reject the delivery if we deem receipt not to be acceptable. If deliveries rejected by us or faulty goods are returned, the supplier shall bear the costs and risk of return transport. The value of return delivery will be charged to the supplier. In doing so, we may not be deemed in default of acceptance.

(7) In the case of direct shipping to our customer, a neutral delivery slip shall be used specifying the FIMA Maschinenbau GmbH order reference, indicating that the delivery is on behalf of FIMA Maschinenbau GmbH. A shipping notice from the haulage carrier should be submitted to us for invoice controlling purposes. In this case, the dimensional data sheet must be sent directly to FIMA Maschinenbau GMBH.

(8) In derogation to No. 2 (4) transfer of risk for special-order contracts shall take place only after acceptance.

(9) If material required for installation or rendering of the supplier's services is delivered or furnished by us, the supplier shall also be responsible for unloading and transportation of the material from the warehouse to the assembly site.

4. Force majeure

Industrial disputes, government interventions, operational breakdowns, disruptions to the supply of materials or power or any other unforeseeable, exceptional and unavoidable circumstances over which we have no control shall release us from receipt of delivery or acceptance of the service for their duration. This shall also apply when these circumstances do not affect us, but third parties (e.g. our customers). The supplier shall be notified immediately of said circumstances and their estimated duration. As a result of these circumstance, insofar as fulfilment of the agreement is thus impossible, or no longer reasonably acceptable for economic reasons, we shall be entitled to cancel the agreement without notice. The supplier shall be entitled to the deliverables in line with Article 645, Paragraph 1, Sentence 1 of the German Civil Code (BGB). Any further claims shall be excluded. The claims of FIMA Maschinenbau GmbH shall remain unaffected by this.

5. Prices and payment terms

(1) The invoice shall include all necessary details in accordance with Article 14, Paragraph 4 in conjunction with Article 14a, Paragraph 5 of the German VAT Act (UStG) and a single copy sent to us after dispatch. It must contain all order details, and may not be included in the shipment under any circumstances. Partial billing shall only possible if corresponding part deliveries were ordered or agreed in writing. Incorrectly submitted invoices shall only be regarded as received once appropriately corrected.

(2) The agreed prices are fixed and include carriage to our place of acceptance, packaging and any ancillary costs.

(3) Unless agreed otherwise payment shall be rendered after 14 days with 3 % discount or net after 60 days. The payment deadline begins on invoice receipt and/or all necessary documents, however at the earliest on acceptance of the delivery item or services, and not prior to receipt of an agreed security.

(4) Payment shall be rendered subject to invoice verification. Our payment does not constitute confirmation of fulfilment of the supplier's contractual obligations. Payment is regarded as rendered on receipt of the transfer draft by our bank.

(5) FIMA Maschinenbau GmbH reserves the right to withhold an appropriate portion of the remuneration when making payment if faults are already identified within the payment period. Assertion of the right of retention shall result in an interruption of the payment term so that a discount may be deducted after fault rectification. The same shall apply if the final documentation has not been received by us 14 days after product delivery at latest.

(6) Advance and instalment payments require separate agreements, and must first be secured by the supplier by an absolute suretyship of indefinite duration upon first request. The suretyship shall be subject to German law and Schwäbisch Hall shall be stipulated as sole place of jurisdiction. Otherwise Section 239 of the German Civil Code (BGB) shall apply.

6. Delivery dates and default

The supplier pledges to notify us immediately in writing of any imminent non-fulfilment of an agreed deadline, the causes thereof, and the probable length of the delay. Insofar as we request such, weekly progress reports outlining the current production status, all initiated and future action, and identifiable problems towards observing the delivery deadline, shall be sent per email to the customer or to a recipient appointed by the latter.

Should delivery or an agreed part delivery not be rendered in full or part by the agreed date through the fault of the supplier, following the fruitless expiry of a subsequent period of grace to be fixed by us for full performance, we shall be entitled to withdraw from the agreement, or to demand compensation for non-fulfilment.

Should the supplier default on delivery, without prejudice to further compensation claims, and unless agreed otherwise, we shall be entitled to demand a contractual penalty amounting to 1% of the order value per each week of default entered (thereunder proportionately), however at most 5 % of the order value. Reservation of contractual penalty pursuant to Article 341, Paragraph 3 of the German Civil Code (BGB) may still be asserted by us up to final payment on the grounds of the contractual relationship, at least however within 14 days of accepting performance.

In the absence of individual pieces of documentation, and final documentation, a maximum amount of EUR 250/day may be billed to the supplier, without prejudice to further compensation claims. Final documentation must be presented within 14 days following product delivery at the latest.

Payment shall only be rendered on receipt of full documentation.

(1) All agreed delivery dates are binding. Early deliveries shall only be permitted subject to our express consent.

(2) The supplier pledges to notify us immediately in writing of any imminent non-fulfilment of an agreed deadline, the causes thereof, and the probable length of the delay.

(3) Should delivery or an agreed part delivery not be rendered in full or part by the agreed date through the fault of the supplier, following the fruitless expiry of a subsequent period of grace to be fixed by us for full performance, we shall be entitled to withdraw from the agreement, or to demand compensation for non-fulfilment. In the event of default with regard to the delivery date, we shall be entitled to demand a contractual penalty to the amount of 1% of the value of the contract per calendar week or part thereof, however at most 5% of the total value of the contract.

The assertion of further compensation claims shall not be prejudiced by this. Reservation of contractual penalty pursuant to Article 341, Paragraph 3 of the German Civil Code (BGB) may still be asserted by us up to final payment on the grounds of the contractual relationship, at least however within 14 days of accepting performance.

(4) In the absence of individual pieces of documentation and final documentation, a maximum amount of EUR 250/day may be billed to the supplier, without prejudice to further statutory compensation claims.

7. Warranty and notice of defects

(1) In the event of a defect we are entitled to choose to withdraw from the contract, to claim damages for non-performance, to receive another delivery of defect-free goods without delay and/or to demand remedying of all defects.

(2) In the event that the period of grace set for subsequent performance, redelivery or remedying of defects places us at an unreasonable disadvantage, as part of our duty to mitigate damages we shall be entitled to remedy the defect ourselves or replace the goods at the cost of the supplier or entrust a third party to do so.

(3) A notice of defect shall be deemed to be duly lodged within 10 working days from receipt of the goods. In the case of hidden defects that cannot be discovered by regular inspection after transfer, the notice of defect shall be deemed to be duly lodged if the defects are notified within 10 working days from discovery of the defect by us or from notice being given by our customers.

(4) The supplier shall be obliged to refund us for any costs arising in connection with a material defect, including those that are legitimately billed to us by our customers, as part of their statutory or contractual liability obligations. Furthermore, the supplier shall compensate us or our customer for losses arising from business interruption, loss of profit and any other damages insofar as the loss was caused by the defective object of the contract for which the supplier was responsible.

(5) If no other agreement was reached, the limitation of liability for claims arising from a defect shall be 36 months from risk transfer. The same shall apply to replacement deliveries.

(6) In the case of any defects of title, the supplier shall release us from any claims that may be lodged by third parties.

8. Right of retention

Retention of title on the supplier's part shall be recognised until the delivered goods have been paid in full. A prolonged or extended right of retention shall not be recognised.

9. Assignment

Assignment or pledging of the supplier's rights arising from the contract shall be subject to our prior written consent.

10. Product liability

Insofar as damage occurs under the supplier's product liability obligation, or claims for compensation are successfully asserted against us by third parties on the basis of agreements concluded, or as part of our product liability, and insofar as the latter is due to a defect of the delivered goods, the supplier shall also be liable beyond the contracted or statutory requirements to make good our loss and expenses, of which proof shall be furnished. If the claimant bases their complaint on a product liability law that does not envisage blame on the part of the damaging party (this applies in particular to the product liability laws of EU countries), the supplier shall be liable to us even without any blame on their part.

11. Supplying of documents, advertising, secrecy

(1) Drawings, models, samples and other documents furnished by us, or drafted according to our specifications, to the supplier or their vicarious agents, shall remain our property and may only be used to process the offer and to execute the commissioned deliverables or services, and may only be made accessible to third parties subject to our prior written consent. On completion of our call for tender or performance of the commissioned deliverables or services, at our request they must be immediately returned or stored by agreement.

(2) Drawings, descriptions etc. that are part of the order are binding for the supplier; they must check them for any inconsistencies and notify us immediately in writing of any errors or suspicion thereof. If they fail to notify us, the supplier may no longer cite said inconsistencies or errors at a later date.

(3) Should they omit to do so, insofar we shall be entitled to assert claims for defects; other claims remain unaffected herewith. Approval of the supplier's technical documents during order performance does not release the latter from their duty to supply perfect deliverables according to state-of-the-art technology.

(4) They shall remain solely responsible for their drawings, plans and calculations, even if the latter have been approved by us.

(5) Furthermore, the supplier shall maintain confidentiality towards third parties regarding all operational processes, equipment, plant etc. on our premises and on those of our customers disclosed to them in connection with their employment, also after submission of the respective offer or completion of the respective order. The supplier shall subject their vicarious agents to corresponding obligations. The use of our calls for tender, orders and associated correspondence for advertising purposes is prohibited.

12. Third-party intellectual property rights

(1) The supplier shall be responsible for ensuring that no domestic or foreign legal rights of third parties, in particular intellectual property rights such as patents, trademarks, copyright or utility models are infringed in connection with the delivery and use of the contractual product. This shall also apply when the supplier is in no way at fault.

(2) Insofar as the supplier holds intellectual property rights, the object of which is the use of the delivered contractual product, they shall grant us the right of joint use of the delivered contractual product free of charge to the extent that is required in order to achieve the purpose of the contract.

13. Foreign trade law, banned substances

(1) Unless otherwise agreed, in their offers and along with their confirmation, the supplier must specify the following: (1) Export licence obligation for the delivery item according to valid EC Dual Use Ordinance with list item number, (2) statistical goods number and (3) country of origin of the goods. In the event that the necessary export licence is not granted, we shall be entitled to withdraw from the agreement; further claims remain unaffected herewith.

(2) Unless the supplier has agreed otherwise, they shall provide evidence of the origin of the delivery item in compliance with the relevant regulations, among other by way of a supplier's declaration, declaration of origin or EUR 1. In the supplier's declaration, the supplier shall state the origin of the delivery item in accordance with the relevant rules of origin of the country of destination.

(3) Existing bans on substances arising from regulations in Germany, or in the country of destination notified to the supplier, must be observed by the latter.

14. Code of conduct, accident prevention and factory regulations

(1) The supplier shall pledge to comply with the laws and regulations of all countries in which they are active. In particular, the supplier shall neither actively nor passively, directly or indirectly indulge in bribery or in the violation of human rights. The supplier shall assume responsibility for the health and safety of their employees, and for environmental protection. They shall also do their utmost to encourage and demand this of their own suppliers.

(2) During installation and assembly work at our customer's premises or the premises of FIMA Maschinenbau GmbH, the supplier shall be responsible for compliance with all accident prevention regulations and all our customer's factory regulations of which they are aware, or any other notified to them.

15. Cancellation, deferred delivery

(1) We may cancel the order at any time. In this case the supplier shall only be remunerated for services rendered up to the time of cancellation on submission of written proof. No other payments shall be recognised. In the case of part deliveries/orders, cancellation may also apply to the part of the order.

(2) Notwithstanding any other cancellation or withdrawal rights, we shall be entitled to cancel the contract or to withdraw from it in part or in full, if the supplier's creditworthiness or ability to deliver deteriorates to such a degree that fulfilment of the contract appears compromised, the supplier stops payments and/or insolvency proceedings are initiated against them or initiation of insolvency proceedings is rejected due to lack of assets. Further compensation claims on our part shall remain unaffected by this.

16. Place of performance, place of jurisdiction and applicable law

(1) Place of performance for the delivery is the place of destination specified in the order. If none is known, it shall be the supplier's place of business, as also for payment.

(2) Place of jurisdiction is the court responsible for Obersontheim/Oberfischach.

(3) The contractual relationship is subject to the law of the Federal Republic of Germany. The application of the Convention on the International Sale of Goods is excluded.

17. Other

(1) All rights and obligations of the parties are conclusively settled in this agreement, verbal ancillary agreements do not exist. Amendments and additions to this agreement and to its appendices require the written form; this also applies to waiving the requirement of the written form.

(2) Should any of these provisions be legally unenforceable or contain omissions, the validity of the remaining provisions shall remain unaffected herewith. Instead of the ineffective clause, the regulation closest to the intent of the parties shall take its place. Otherwise the statutory provisions shall apply.

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