

**Sales terms 04/2021**  
**FUCHS Enprotec GmbH ▪ Stocktal 2 ▪ 56727 MAYEN ▪ GERMANY**

**§ 1 General information – Scope**

- (1) Our deliveries shall solely take place in accordance with the General Terms of Conditions for Purchase as detailed below in the version in effect at the time the order was placed. They also apply to all future business transactions, even if they are not referenced by us in all individual cases.
- (2) Deviating, conflicting, or supplementary General Terms and Conditions, even if they are known, shall not form part of the contract unless their validity has been expressly agreed upon. This shall also apply even if we provide the delivery/performance with knowledge of contradictory Terms and Conditions of the buyer or third party without reservations. If the buyer does not agree with the procedure above, it shall specifically express its disapproval in a separate letter immediately. In this case, we reserve the right to withdraw from the contract.
- (3) The Terms and Conditions shall only apply to relations with business owners, legal entities under public law, or special funds under public law.

**§ 2 Conclusion of contract**

- (1) By placing the order, the buyer makes a binding commitment to place an order. We reserve the right to accept the contract offer enclosed with the order within two weeks of receipt. If the order deviates from the information in the preliminary negotiations, our brochures and information materials, as well as our website, we can accept the offer within four weeks. During this period, the buyer shall remain bound to its order.
- (2) We reserve all rights of ownership and copyright to images, drawings, calculations, and other documents; they shall not be made accessible to third parties. This applies in particular to written documents designated as “confidential”; before forwarding them to third parties, the buyer shall obtain our express written consent.
- (3) During the delivery period, the right is reserved to make design and styling changes necessary to improve technology or to meet legal requirements, if the delivery item is not changed significantly and the change is reasonable for the buyer.
- (4) We can provide planning services related to the order up front without any guarantee. No additional cost will be incurred for this.

**§ 3 Prices – Terms of payment, offsetting, and retention**

- (1) Unless indicated otherwise in the order confirmation, the prices are direct from the factory, excluding packaging; this will be invoiced separately.
- (2) Our prices do not include the statutory VAT; this will be itemized on the invoice at the statutory rate on the day the invoice is issued.
- (3) Unless indicated otherwise in the order confirmation, the net purchase price (without deductions) is due within 30 days from the date of invoice. Should the time allowed for payment be exceeded, at the latest at the time of default, we are entitled to charge interest in the amount of the relevant bank interest rates for overdrafts, but at no less than the statutory default interest rates plus a fixed amount of €40.00.
- (4) The withholding of payments as well as offsetting is only permissible for claims that are undisputable, legally established, or ready for decision, as well as counterclaims arising from the same contractual relationship due to possible defectiveness of the object of purchase or for completion costs. If costs for corrective actions or additional costs for completion arise from the same contractual relationship, the buyer shall not have the right of retention, insofar as the retained amount is not in proportion to the defects and the expected costs for the subsequent performance.

**§ 4 Delivery time, delay in delivery, and default of acceptance**

- (1) The delivery time shall be agreed upon individually or will be specified by us upon the acceptance of the order. The period of delivery specified by us shall only start after all technical issues have been resolved, if and insofar this is required for duly rendering performance, if a binding delivery time has not been expressly agreed upon.
- (2) Adherence to our delivery obligation is subject to the punctual and proper performance of the duties and obligations of the buyer. Delivery periods and deadlines have been complied with if the delivery item has left our company before they expire.
- (3) If the buyer is in default of acceptance, or fails to perform its duty to cooperate, or if our delivery is delayed for other reasons for which the buyer is responsible, we shall be entitled to claim compensation for damages incurred by us including any additional expenditures. In this case, the danger of an accidental loss or an accidental deterioration of the purchased item will also pass to the buyer at the point in time it is in default of acceptance.
- (4) Provided we cannot adhere to the binding delivery times for reasons beyond our control (non-availability of performance), we will notify the buyer immediately and at the same time provide the expected new delivery period. If performance remains unavailable within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we will promptly compensate the buyer for any services already provided in return. The unavailability of performance in this sense particularly includes our suppliers failing to deliver in good time, if we have concluded a congruent coverage transaction, neither we or our supplier are at fault, or we are not obligated to provide performance in the individual case.

- (5) If we are unable to fulfill a contractual obligation due to unpredictable circumstances lasting more than 14 calendar days, which we or our subcontractor were not able to avoid even by applying reasonable care and attention, e.g., interruptions to operation beyond our control as a result of fire, water, or machine damage, or due to force majeure such as strikes, lockout, scarcity of energy and raw materials, transport bottlenecks beyond our control, regulatory actions, or non-delivery, incorrect or late delivery by suppliers, as well as other obstructions that – considered objectively – were not caused by our negligence, the delivery times shall be extended by the periods during which the above event or its effects persist, even if they occur during the delay in delivery. The same shall apply if official approvals or other approvals or documents of third parties that are necessary for carrying out deliveries are not received in time; this shall also apply if subsequent changes are made to the order. The buyer shall be notified of these delivery period extensions in writing or in text form.
- If a delivery time has been exceeded by more than 4 weeks and it is objectively unreasonable for the buyer to adhere to the contract, the buyer shall be entitled to withdraw from the contract because portions of the contract have not yet been fulfilled. If the buyer has agreed upon a binding delivery date, it is entitled to withdraw immediately if the timely performance is essential for the buyer.
- (6) **The occurrence of our delay in delivery is determined according to the statutory provisions. However, a reminder by the buyer is required in all cases. If we are in delay in delivery, the buyer shall be entitled to claim a fixed amount for its damages caused by the delay. The fixed compensation for damages is 0.5% of the net price (value of the delivery) for each complete calendar week of the delay. However, it is limited to a total of 5% of the delivery value of the goods delivered late. We reserve the right to prove that no damages or only substantially lower damages have been incurred by the buyer than the above fixed amount.**

## **§ 5 Transfer of risk**

- (1) Unless indicated otherwise in the order confirmation, the parties have agreed upon a delivery direct from the factory.
- (2) At the buyer's request, we will cover the delivery through transport insurance; the buyer shall pay for the costs incurred for this.
- (3) The danger of an accidental loss or an accidental deterioration of the good will pass to the buyer upon the proper and complete performance of the delivery obligation as well as when the prerequisites as per Paragraph 4, Section 3 are met.

## **§ 6 Liability for defects**

- (1) First and foremost, the agreement concluded regarding the properties of the goods forms the basis for our liability for defects. Insofar as we offer planning services prior to the order, we do not assume any liability for a certain result or success in connection with planning.
- (2) If a defect is present, we shall initially be entitled – at our discretion – to subsequent performance through rectification or newly produced goods. In case of remedial action, we shall be obligated to bear all expenses required for the purpose of remedial actions, especially for transport, travel, labor, and materials, as long as they are not increased disproportionately due to the fact that the purchased item was taken to a location other than the place of performance.
- (3) We shall not be liable for defects in deliveries to third parties or other external influences resulting from unsuitable or improper use, incorrect or unsuitable assembly or startup by the buyer or third parties, natural wear and tear, improper or careless handling, excessive loads, unsuitable operating materials, intrusion of foreign bodies, or poor workmanship.
- (4) If subsequent performance has failed or an appropriate period to be set by the buyer for the subsequent performance has expired without success or if subsequent performance can be waived under the statutory provisions, the buyer has the right to withdraw from the contract or reduce the purchase price. However, there shall be no right to withdraw if the defect is negligible.
- (5) Contrary to Paragraph 438, Section 1, No. 3 BGB, the general statute of limitations for claims from defects of quality and title is one year from delivery. If an acceptance has been agreed upon, the statute of limitation starts with the acceptance. If the goods are a building or an object that has been used for building construction in accordance with its usual application and was the cause of the building's defectiveness (building material), the statute of limitations is 5 years from delivery in accordance with the statutory provisions (Paragraph 438, Section 1, No. 2 BGB). Special statutory provisions concerning the statute of limitations remain unaffected if we can be accused of premeditated conduct.
- (6) The prerequisite for all warranty rights of the buyer is that it has properly fulfilled all the obligations to inspect and give notice of defects in accordance with Paragraph 377 HGB.

## **§ 7 Liability**

- (1) We shall only be liable for damages – irrespective of the legal grounds – in case of premeditation and gross negligence as part of liability in torts. In case of simple negligence, we shall only be held liable exclusively as provided for by law (e.g., diligence we exercise for our own affairs; insignificant breach of duty)
- a) For damages resulting from injury to life, body, or health,
- b) For damages resulting from the breach of an essential contractual duty (obligation, the satisfaction of which only enables the proper execution of the contract at all and with which the contractual partner relies and may as a rule rely on its compliance); in this case, our liability is limited to the compensation for the foreseeable, typically occurring damages.
- Sentence 1 shall also apply to third parties as well as in case of breach of duty of persons (including to their benefit), whose fault we are responsible for under statutory provisions. The liability limitations shall not apply if a defect has been concealed maliciously or a quality guarantee has been given for the goods and for claims of the buyer based on the Product Liability Act.
- (2) The buyer can only withdraw from the contract or cancel the contract due to a breach of duty that does not consist in a defect if we are responsible for the breach of duty. A free right of cancellation of the buyer (especially as per paragraphs 650, 648 BGB) is excluded. Otherwise, the statutory requirements and legal consequences shall apply.
- (3) Our liability is limited to a maximum amount of € 4 million.
- (4) The above rulings do not constitute any change in the burden of proof to the disadvantage of the buyer.

## **§ 8 Retention of title**

- (1) We reserve the right of ownership of the purchased item until all payments from the delivery contract have been received.
- (2) If the buyer acts in a manner contrary to the contractual obligations, in particular in the event of a default in payment, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and request that the purchased item be returned. Asking for the return shall always constitute a declaration of withdrawal from the contract.
- (3) The buyer is obligated to treat the purchased item with care. In particular, the buyer is obligated to insure it adequately at its own cost at the original value against damage by fire, water, or theft. If maintenance and inspection work is required, the buyer must perform this work at its own expense in a timely manner.
- (4) In the case of seizure of the goods or other interventions by third parties, the buyer shall inform us in writing without delay so we can take action in accordance with Paragraph 771 ZPO (German Civil Practice Act). If the third party is not able to reimburse us for the judicial and extrajudicial costs incurred for a claim as per Paragraph 771 ZPO, the buyer shall be liable for the loss incurred by us.
- (5) The buyer has the right to resell the purchased item in the customary course of business. However, as a precaution, the buyer shall already surrender to us all claims in the amount of the final invoice amount (incl. VAT), arising from the resale to its client or to a third party, irrespective of whether the purchased item is resold without or after processing. The buyer shall remain entitled to collect this claim even after assignment. Our authority to collect claims ourselves shall remain unaffected by this. However, we agree not to recover debts ourselves as long as the buyer meets its payment obligations from the proceeds collected, is not in default of payment, and in particular has not filed application for the institution of bankruptcy or insolvency or composition proceedings, or ceased to make payments. However, should this be the case, we can demand that the buyer notify us of the claims assigned and their debtors, provide us with all information necessary for collection, hand out the associated documents, and notify the debtors (third parties) of the assignment.
- (6) Processing or transformation of the purchased item by the buyer shall always be done for us. If the purchased item is processed with other objects that do not belong to us, we shall acquire joint ownership in the new item in proportion to the value of the purchased item in relation to the other processed objects at the time of processing. In these cases, the buyer also has the right to resell the purchased item in the customary course of business. The objects created by processing shall be subject to the same provisions as the purchased item delivered under reservation. In particular, the buyer shall already surrender to us all claims resulting from reselling the goods to its client or to a third party, in each case in the amount of the final invoice amount of our invoice from the delivery contract (incl. VAT). With regard to the collection of the receivables, Paragraph 8, Section 5 applies correspondingly.
- (7) The buyer shall also assign to us the claims for securing our receivables in the amount of the final invoice amount (incl. VAT), which arise against a third party from combining the purchased item with a plot of land. With regard to the collection of the receivables, Paragraph 8, Section 5 applies correspondingly. Furthermore, the buyer shall also assign to us the claims related to the release against third party protection providers and conditional sellers, each in the amount of the final invoice amount or our invoice from the delivery contract (incl. VAT), which are due to the buyer with regard to the receivables from the resale of the goods against these third parties.
- (8) We undertake to release the securities due to us at the request of the buyer insofar as the realizable value of our securities will not exceed the receivables to be secured by more than 10%. We shall be entitled to select which securities to release.

## **§ 9 Choice of law – Place of jurisdiction – Place of performance**

- (1) Unless agreed otherwise, this contract shall be governed by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- (2) The location of our company's registered office shall be the place of jurisdiction. However, we shall also be entitled to sue the buyer at its place of jurisdiction.
- (3) Unless indicated otherwise in the order confirmation, our registered offices shall be the place of performance.