

General Conditions of Purchase FAIST Anlagenbau GmbH

As at: February/March 2002

1. **Validity**

The following General Conditions of Purchase apply to all current and future orders and other commercial transactions between our company and business enterprises, legal entities under public law or separate property under public law. Deviating conditions shall only apply if we have given prior written consent. We will not recognise the general terms and conditions of trade of the supplier.
 2. **Conclusion of contract, observance of secrecy, customer protection, contractual penalty**
 - 2.1 Basically, offers and quotations are to be given in writing and are to be free of charge to us.
 - 2.2 Orders and any changes made to them are only valid if they have been placed in writing by us or have been confirmed in writing.
 - 2.3 Also additional agreements and alterations shall only be valid in writing.
 - 2.4 Unless otherwise stipulated in the contract concluded with the client, we reserve the right to ownership and exclusive utilization of all information, knowledge and documents handed over by us. They, together with our trade and company secrets that have been disclosed, are to be treated confidentially at all times and may not be utilized or exploited beyond the business relationship with us, unless we give our consent to this.
 - 2.5 Following completion or fulfillment of an order or contract, all documents are to be returned to us, and any copies of those documents are to be destroyed and all data files are to be deleted. Third parties may not have access to such material without our express approval. The obligation to maintain secrecy shall remain effective even after the winding up of this contract.
 - 2.6 If we order complete sound proofing installations or parts of such installations to be delivered to us by the supplier, then that supplier shall undertake not to contact our client directly in his fulfillment of the contractual obligations, unless we give express consent to do so. If, however, this should become necessary in order to carry out the order, then our written consent must be obtained, and the supplier must draw up a report of any conversations or meetings with the final customer and submit this to us. This provision shall also apply if the final customer seeks contact with the supplier. The supplier hereby undertakes to refrain from producing, marketing or offering for sale articles that are identical to the products that the supplier manufactures for us, or that are similar to these products or could be substituted for them. This stipulation shall apply for a period of two years after a possible termination of the business relationship between the supplier and our company. For each case of infringement of this contractual obligation, a contractual penalty of € 25,000.00 is hereby deemed to be agreed on and shall stand alongside the right to injunctive relief. The Parties will bear the burden of proving substantially higher or lower damage.
 3. **Delivery**
 - 3.1 Agreed dates and time limits shall be binding. Receipt by us of the goods and the relevant necessary documentation papers is the decisive factor relating to whether or not such deadlines have been complied with. Acceptance of a delayed delivery or service does not mean that a claim to damages has been waived. If a delivery is sent early, then our payment deadline shall apply only from the day of the delivery date stated by us. Any costs incurred by us for goods sent as fast freight, for express charges, telephone and fax costs etc. shall be borne by the supplier.
 - 3.2 Excess delivery or short delivery by the supplier is not permitted.
 - 3.3 If the supplier foresees that problems could arise in the manufacturing process or in the supply of materials, then he is to notify us immediately, and also if circumstances occur which are outside the supplier's influence and which prevent him from delivering the goods in the prescribed quality on time. If we have good reason to believe that the supplier cannot meet the deadline, so that we in turn are in danger of not being able to meet deadlines with our contractual partners, then we shall be entitled to withdraw from the contract after having given notice to this effect. We are entitled to monitor the progress of work and to accept goods after inspection at the production plant. If fixed dates and time limits relating to full or remaining parts of a delivery are not met, then we are entitled to withdraw from the contract, even without setting a new time limit.
 - 3.4 Notwithstanding the above stipulations, we are entitled to claim a contractual penalty if the supplier fails to meet deadlines regarding delivery and provision of services. The contractual penalty will be 1% of the full value of the delivery or services to be provided, and will be charged for every full week of delay in performance. Every working day of each week commenced will be calculated as 1/6 of a week. The contractual penalty will be due when the party accepting the contract or order is in default, and it will amount to a maximum of 5% of the full value of the delivery or services to be provided. It is up to the parties to assert their claim to significantly higher or lower damages.
 - 3.5 All deliveries shall be at the risk and at the cost of the supplier. The supplier is hereby bound to ensure that the goods are carefully packed according to normal trade practice. The regulations of the relevant carrier or forwarding agent are to be observed. Reusable packaging is to be clearly marked.
 - 3.6 Assembly instructions, operating instructions and lists of spare parts or any other documentation in the language and quantity stipulated by us and required for the smooth and flawless utilization of the goods delivered, shall be part of any delivery.
 - 3.7 Two copies of a delivery note must be enclosed with each individual delivery. On each copy of the delivery note our order number and order date must be given, as well as our project number and article number.
 - 3.8 The provisions of this clause also apply correspondingly to partial deliveries that have a fixed deadline. We are entitled to keep partial deliveries and are still otherwise entitled to withdraw from the contract.
 - 3.9 We cannot guarantee acceptance of goods that are not delivered within the unloading times specified by us. In the case of individual items that weigh more than 2.5 tonnes, prior notification of delivery must be given.
 4. **Acceptance**
 - 4.1 We will check the goods and services within a reasonable period of time to determine any possible deviations regarding quality and quantity; we will give punctual notice of any defects we may detect. Notification of any defects shall be deemed as having been given punctually, if it is received by the supplier within ten working days after delivery or after the defect has been detected. Notification of hidden defects is also permissible after this time limit.
 - 4.2 If an acceptance test has been agreed upon to establish the work performed, then this is to be carried out in accordance with the customary engineering standards and requirements (VDI-Richtlinien, Guidelines of the Association of German Engineers). As regards acceptance of complete machines or structural components, the special regulations specified in our orders shall apply.
 5. **Prices and Payment**
 - 5.1 The prices given in any order are fixed prices.
 - 5.2 The prices are free at our factory gate, or the point of delivery stipulated by us, including packaging.
 - 5.3 Payment is to be effected on the 25th of the following month with 2% discount, or within 90 days net, following complete delivery of the goods in accordance with the contract, and receipt of a proper invoice in triplicate from which the individual items can be checked.
 - 5.4 We are entitled to stipulate the method of payment.
 - 5.5 Price increases after conclusion of the contract shall be ruled out, unless we give express written approval of this.
 - 5.6 In the case of assembly work and work carried out by sub-contractors, supplements or additions will only be accepted by us, if such work was approved by us in writing prior to it being carried out.
 6. **Invoice**

Any invoices which do not bear our full references and numbers, shall be deemed as not having been issued, until the supplier has clarified the data. This stipulation shall also apply correspondingly to delivery notes. Partial deliveries and remaining deliveries are to be clearly marked as such on invoices. Under no circumstances are they to be enclosed with the goods. Invoices must be issued in triplicate, and a copy of the delivery note marked by us is to be enclosed. For every FAIST-order, a separate delivery note and a separate invoice is to be issued.
 7. **Warranty/Liability**
 - 7.1 The supplier guarantees that the goods delivered are free from defects when handed over to us, in particular that they are of the quality specified in our ordering conditions, and that they comply with the present state of the art and scientific knowledge, as well as the relevant statutory requirements, regulations regarding protection and accident prevention, and the usual technical standards (for example DIN or VDI German Industrial Standards or the Association of German Engineers), in particular as regards a form of utilization that can reasonably be expected. All details given by the supplier in his quotations, his brochures and other documents shall be deemed as the agreed quality.
 - 7.2 The period of guarantee, namely 24 months, will commence from:
 - the date of delivery or acceptance of goods that are to be further processed by us;
 - the date on which our customers accept deliveries and services which are to be installed directly by them without any further processing by us or the supplier.
 - 7.3 The supplier is obliged to remedy defects within a reasonable period of time and at the point of utilization; this is to be done at his own expense and including his travelling expenses, dismantling and assembly. In cases of urgency, we are entitled, after notification to the supplier, to immediately replace defective parts ourselves, or to have them replaced by a third party. The costs incurred by this are to be borne by the supplier.
 - 7.4 Notwithstanding other rights that we are entitled to, we are also, in cases of defects, entitled to the following:
 - to return the rejected goods to the supplier at his expense and risk, and to demand an immediate replacement from him, or, in cases of urgency, we may obtain from a third party a replacement for the rejected goods, and / or
 - to cancel the order in its entirety or partially without setting a new deadline.
 - 7.5 If, on the grounds of liability without fault, claims are enforced in accordance with national and international law against us by third parties due to defectiveness of the delivered goods, then the supplier assumes liability in our stead to the extent that he would be directly liable. He undertakes to assume all costs incurred by us in averting the damage or preventing damage (e.g. recalling goods). The supplier undertakes to take out sufficient liability insurance to satisfy claims for damages arising from possible defects in the goods delivered by him. If requested by us, the supplier shall submit without delay verification of such insurance. By conclusion of such insurance, however, the supplier will not be released from any further claims for damages which have not been covered.
 - 7.6 If our customers notify us of defects, and they can be traced back to defective parts coming from the supplier, then the supplier shall bear the costs of materials, travelling expenses and personnel expenses, as far as legally permissible, for establishing the cause of the defect and remedying it; irrespective of whether they occurred through our actions or through a party acting on our behalf.
 - 7.7 Warranty shall also cover parts manufactured by subcontractors.
 - 7.8 Up to expiration of the warranty period we are entitled to retain 10% of the contract price as a guarantee; the ordering party can replace this any time by a bank guarantee after the goods have been accepted. If the supplier becomes insolvent before we have made our final payment, we are, notwithstanding any further rights, entitled to withhold an additional sum of 20% of the contract price for the period of the warranty obligation, in order to secure our warranty claims.
 - 7.9 Acceptance and payment of the goods by us does not mean that we consider them free of defects.
 8. **Third Party Protective Rights, Rights of Utilization of Software**
 - 8.1 The supplier shall be liable for and has to guarantee that through utilization of the delivered goods no protective rights or business or operating secrets or patent rights of third parties at home or abroad will be infringed.
 - 8.2 He shall be liable for all damages that we are faced with as a result of infringement of such protective rights through utilization of the article delivered, as far as legally permissible. He undertakes to indemnify us against liability as regards any claims by the owner of the protective rights. This provision shall also apply to deliveries from a third party.
 - 8.3 Where software is necessary in order to use the delivered goods, the supplier assigns to us the relevant rights of utilization. We are entitled to transfer this right of utilization to a third party.
 9. **Reservation of Ownership, Provision of Materials**
 - 9.1 In cases where we provide parts to the supplier, we reserve our right to ownership. Further processing or reshaping through the supplier will be carried out for us. If our reserved goods are processed with other articles that do not belong to us, then we shall acquire co-ownership of the new article, proportionate to the value of our article with the other processed article at the time of processing.
 - 9.2 If the articles provided by us are inseparably mixed with other articles that do not belong to us, then we shall acquire co-ownership of the new article, proportionate to the value of the reserved articles with the other mixed articles at the time of mixing. If the articles are mixed in such a way that the suppliers' article must be seen as the principal component, then it is hereby deemed agreed upon that the supplier grants us proportionate co-ownership; the supplier holds the sole ownership or co-ownership in safe custody for us.
 - 9.3 We reserve the right to ownership of all tools. The supplier is obliged to use the tools exclusively for the production of the goods ordered by us. The supplier is obliged to insure the goods belonging to us against fire, water and theft at their reinstatement value, and at his own expense. He is obliged to carry out any necessary maintenance and inspection work at his own expense and in good time. If there is any disruption of operations, he is to inform us immediately. He will do his utmost to stop third parties from interfering with our property, and will notify us immediately if a third party intends to lay claim to our property.
 10. **Product Liability, Indemnity and Liability Insurance**
 - 10.1 In cases where the supplier is responsible for product damage, he is obliged to indemnify us in this respect against claims for damages from third parties, when first requested to do so, and to the extent that the cause lies within his power of control and sphere of organizational influence, and he is himself liable in relation to third parties.
 - 10.2 Within these limits the supplier is also obliged to reimburse us any possible expenses in accordance with sections 683 and 680 of the German Civil Code (BGB) that may result from a product recall by us, or in connection with such action. As far as reasonably possible, we will inform the supplier of the details and the scope of any measure to recall products, and give him an opportunity to issue a statement.
 - 10.3 The supplier is bound to maintain a product liability insurance with an insured sum of € 5 million as a lump sum settlement for each case of personal injury and damage to property; any further claims to damages that we are entitled to shall remain unaffected.
 11. **Setoff, Assignment**

The supplier may not offset against claims, unless these claims have been declared legally valid or have been recognized by us. Debt claims may only be assigned with our written consent.
 12. **Additional Provisions**
 - 12.1 Place of performance for all deliveries and work performed shall be the corporate seat or our company or the given place of utilization.
 - 12.2 The place of jurisdiction is Krumbach for businessmen, legal entities under public law or separate property under public law. But we are also entitled to bring a case before the court that is locally competent for the place of business of the supplier.
 - 12.3 German law shall apply, excluding the conflict of laws provisions and the UN sales convention.
 - 12.4 If any of these provisions or parts of these provisions are or become ineffective, then the validity of the remaining provisions shall not be affected.
- Translator's note: Translated from the original German version, which shall prevail in case of dispute.*