

# FAIST Anlagenbau GmbH general conditions of purchase as of: March 2017

## 1. Validity

1.1 The following terms and conditions apply to all current and future orders and other transactions with companies, legal entities under public law or public law special funds ("suppliers"). Deviations from these conditions are only valid if we agree to them in writing. The general terms and conditions of the supplier are not recognised by us.

1.2 Individual agreements with the supplier have priority over these general conditions of purchase.

## 2. Conclusion of the contract, confidentiality, customer protection, contractual penalty

2.1 Offers have to be provided in writing and free of charge for us.

2.2 Orders and amendments are only valid when granted in writing or confirmed in writing by us.

2.3 Additional agreements and changes are valid only in writing.

2.4 For all information given to us for the purpose of the order, findings and documents we reserve the ownership and exclusive right of exploitation, unless the agreement with the suppliers states otherwise. The supplier is obligated to keep secret all non-obvious information, insights and documents received from us or became known in any other way such as technical and other data, measured values, technology, operating experience, know-how, compositions and other documentation ("information"), not to make them available to third parties without our permission and to use them only for the purposes of processing the respective contract. Officers, employees and subcontractors are to commit to secrecy in accordance with this section 2.

2.5 After completion of the order all documentation for the purpose of the order is to be returned to us, all copies are to be destroyed and all files to be deleted. The confidentiality obligation is valid for a period of four years after order completion.

2.6 For orders where the supplier delivers complete soundproofing equipment or parts of it to us, he/she is obliged not to contact the customer without our consent within the framework of the order fulfilment. If this is necessary for the order execution, our written consent must be requested and the supplier has to create a conversation log for every conversation with the end customer. The same applies if the customer is directly looking for contact with the suppliers. The supplier undertakes not to manufacture any products, to distribute or to offer them, which are similar to the products the supplier manufactures for us or can substitute them as far as we have a similar interest. This applies also for a period of two years after an eventual end of the cooperation with us. A contractual penalty at the amount of € 25,000.00 applies for each case of infringement of these obligations agreed, which occur in addition to the injunctive relief. The party's evidence of much higher or much lower damage remains reserved.

## 3. Delivery

3.1 Agreed dates and deadlines are binding. The delivery date specified in the order and the agreed delivery address is binding. The receipt of the goods and the necessary documentation with us is relevant for its compliance. Acceptance of late delivery or service does not constitute a waiver of claims. In case of premature delivery, our payment terms apply only as of the date of delivery. Any resulting costs for us such as express freight, express, phone or fax charges, etc. are at the expense of the supplier.

3.2 The supplier is not entitled to excess or short deliveries.

3.3 If the supplier anticipates any difficulties in the production or procurement of materials, he/she must immediately notify us even if circumstances uninfluenced by the supplier occur, which could prevent an on-time delivery of quality prescribed. If it is highly probable prior to the maturity of the service that the supplier cannot deliver on time, we are entitled, to premature withdrawal from the contract after notice if there is a chance that we cannot keep deadlines on our part to other contract partners. We are also entitled to carry out examination of work progress and checks in the factory. In case of excess of contractually agreed dates or time limits in relation to the whole or a remaining delivery we are entitled to withdraw from the contract without setting a deadline.

3.4 Without prejudice to the foregoing provisions, we are entitled to demand a contractual penalty in case of delivery or service delay by the suppliers. The penalty is 1% of complete delivery / service scope for each complete week of delivery and delay in service. Every working day of a started week is counted as a 1/6-week. The penalty is payable if the supplier is in default and is maximum 5% of the complete delivery / service scope. The right to claim a much higher or much lower damage remains with the parties.

3.5 All deliveries are at the risk and expense of the supplier. We make it mandatory for a supplier to provide commercially standard and careful packaging. The regulations of the respective carrier or freight forwarder must be observed. Returnable packaging is to be marked.

3.6 The delivery also include installation instructions, operating instructions and spare parts list or others necessary for the proper use of documentation in the language and amount prescribed by us.

3.7 Each individual delivery shall be accompanied in duplicate by the delivery note. Our order number, the date of our order, our project number and item number shall be indicated on the delivery note which has to be provided dually.

3.8 The provisions of this paragraph shall apply with the exception of paragraph 3.4 mutatis mutandis to date in terms of fixed partial services. In the case of delivery and service delay of term related fixed partial services, we are entitled to demand a contractual penalty. The penalty is 1% of the partial service delivery / service scope for each complete week of delivery and service delay. Every working day of a started week is counted as a 1/6-week. The penalty is payable if the supplier is in default and is maximum 5% of the complete delivery / service scope. The right to claim a much higher or much lower damage remains with the parties.

3.9 The acceptance of the goods outside the off loading times provided by us can not be guaranteed. For individual packages with more than 2.5 tons of weight a dispatch note is to be delivered to us in advance.

## 4. Acceptance

4.1 We will check the goods or services within a reasonable period of time for any quality or quantity deviation and reprimand any detected defects in a timely manner. A complaint is on time, if it is received by the supplier within a period of 2 weeks after delivery of the defect. A complaint for hidden defects is deemed on time if it is received within a period of 2 weeks from discovery of the defect by the supplier.

4.2 If an acceptance test for determining service is agreed, this will be carried out according to the customary rules of technology (i.e. VDI). The special provisions specified in our purchase orders apply for the acceptance of complete machines or assemblies.

## 5. Price and payment

5.1 The prices specified in the purchase order are fixed prices.

5.2 The prices are free factory or the place of delivery specified by us including packaging.

5.3 The payment shall be made in accordance with jointly agreed payment terms.

5.4 We are entitled to choose the payment method.

5.5 Subsequent price increases are excluded without our written approval.

5.6 During assembly and subcontracting services, supplements are only accepted by us if this service was approved in writing by us prior to your delivery.

## 6. Invoice

Invoices that are created without specifying our order number shall be deemed not granted until clarification has been given by the supplier. The same shall apply analogously to deliveries. On the invoices, partial and rest deliveries shall be referred to as such. They may not be attached to the goods. The invoice is to be created and submitted on paper or digitally to [e.invoice@faist.de](mailto:e.invoice@faist.de). A separate packing slip and a separate invoice are to be created for each FAIST order.

## 7. Warranty/Liability

7.1 The Supplier warrants that the delivery item on transfer to us is error-free, that it has the texture resulting especially from our order specifications and is according to the latest issue of science and technology, the relevant laws, safety and accident prevention regulations, ordinance on hazardous substances and the usual technical standards (i.e. DIN or VDE), especially in regards to reasonable usage. If machines, devices, or equipment are subject to the service, these must comply with the requirements of the contract special safety regulations for machines, devices and systems with CE label applicable at the time and a declaration of conformity must be enclosed. All supplier information in its offers, brochures and other documents are deemed as agreed quality.

7.2 The warranty period of 24 months expires:

- Date of delivery or acceptance of goods that are processed by us,
- Date of acceptance by our customers for goods and services, which are installed without further processing by us or by the suppliers directly at our customers.

7.3 The supplier is obligated to rectify defects at its cost at the point of use in a reasonable period of time. In the case of delivery recourse under section 478 paragraph 2 BGB, the supplier undertakes to assume costs of disassembly and reassembly in order to remedy the defect. In cases where it is no longer possible and reasonable for us because of particular

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urgency, to inform the supplier of the shortages and the impending damage and to set a short deadline for him/her, we are entitled to immediately replace defective parts or to replace it with a third party by informing the supplier. The resulting costs are at the expense of the supplier.

- 7.4 After acceptance of performed works for repaired or replaced parts the warranty period for delivery parts that could not remain in operation for warranty defects starts again and extends the current warranty from the time of the interruption. This does not apply if we had to assume based on the behaviour of the suppliers that this was not required for the measure, but made the replacement delivery or defects of goodwill or similar reasons.
- 7.5 If a third party asserts a claim against us on the basis of strict liability due to defectiveness of the goods delivered under domestic or foreign law claim, the supplier is liable towards us to the extent that he/she himself/herself would be subject to such liability. He/she undertakes to take over all costs incurred to us to prevent damage or prevention methods (i.e. recalls). The supplier is obliged to conclude a sufficient liability insurance to satisfy any claims due to any failure of the goods delivered by him/her. At our request, the supplier has to prove the insurance without delay. The supplier is not exempt from non-covered, additional claims.
- 7.6 When complaints from our customers show that the cause of the deficiency is due to defective parts from the supplier, he/she is liable for costs arising from the enlightenment of the error cause and troubleshooting on property insurance, travel and as far as legally permissible for personnel costs, irrespective of whether they are caused by us or our authorised agents.
- 7.7 The warranty extends to the parts manufactured by subcontractors.
- 7.8 We are entitled to a warranty holdback amounting to 10% of the contract price which can at any time be replaced by an unlimited, joint and several guarantees or a guarantee of a bank, savings bank or a credit insurance company headquartered in Germany until the end of the warranty period. In the event that the supplier will become insolvent before our final payment, we have rights - for the duration of the warranty claim - to an additional reserve for backing up our claims amounting to another 20% of the contract price, which can at any time can be replaced by a joint, open-ended guarantee or guarantee of a bank, savings bank or a credit insurance company headquartered in Germany after the acceptance without prejudice.
- 7.9 The acceptance and payment of the goods by us does not mean that we recognise them as free of defects.
- 8. Property rights of third parties, rights to software**
- 8.1 The supplier shall be liable for ensuring that not statutory regulations, property rights, as well as business or trade secrets or patent rights from third parties at home or abroad are infringed by using the delivered goods.
- 8.2 The supplier shall be liable according to the statutory regulations for all damages caused by infringement of such rights by the subject of the delivery. He/she is obliged to indemnify us from claims by the copyright owners. This also applies to deliveries by third parties.
- 8.3. As far as software is used for the use of the delivery, the supplier transfers the respective copyright to us. We are entitled to transfer the right of use.

## **9. Retention, provision**

- 9.1 Where we provide parts to the supplier, we retain title thereto. Processing or transformation will be carried out by the supplier on our behalf. If the goods supplied by us under reservation of title are processed together with other items that do not belong to us, we shall acquire co-ownership of the new item created in the ratio of the value of our item (purchase price plus value-added tax) to the value of the other processed items at the time of processing.
- 9.2 If the goods are inseparably mixed with other objects not belonging to us, we shall acquire joint ownership of the new item in the ratio of the value of the goods to the other processed items at the time of mixing. If the mixing is carried out in such a manner that the supplier's item can be regarded as the main item, it is hereby agreed that the supplier will transfer the proportionate joint ownership to us; the supplier shall preserve the sole or joint ownership for us.
- 9.3 We reserve the title to all tools provided by us to the supplier. The supplier undertakes to use the tools solely for the manufacture of the goods that we order. The supplier shall also take out a new-for-old insurance policy protecting the tools belonging to us against fire; water damage and theft at his/her own expense. He/she is obliged for making any necessary and timely maintenance and inspection works at his/her own expense. Any incidents have to be reported to us immediately. He/she will do everything to fend off intervention of third parties to our property and inform us immediately if third parties want to claim our property.

## **10. Product liability, indemnification and liability insurance protection**

- 10.1 If the supplier is responsible for the damage to a product, he/she is obliged to indemnify us from third-party claims at first request, insofar as the cause is located within his/her sphere of control and organization, and he/she himself/herself is liable.
- 10.29.3 In this context, the supplier is also obligated to reimburse us any expenses arising out of or in connection with a recall conducted by us, in accordance with §§ 683, 670 BGB. Where feasible and reasonable, we will inform the supplier about the content and scope of the recall and give him/her the opportunity to comment.
- 10.3 The supplier commits himself/herself to a product liability insurance with an insured sum of € 5 million per personal damage - flat rate; we are entitled to further compensation claims, these shall remain unaffected.

## **11. Offsetting / assignment**

The supplier may not offset against claims, unless these have been legally established or recognized by us. Claims may be assigned only with our written consent. This does not apply if there is a mutual trading business within the meaning of § 354a German commercial code.

## **12. Other**

- 12.1 The supplier undertakes to comply with Regulation (EC) no. 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and will confirm this prompted by us in writing.
- 12.2 Place of service for all deliveries and services is the seat of our company or the provided place of use.
- 12.3 Jurisdiction for merchants, legal persons of public law or public special assets is Krumbach. We are also entitled to call the court competent for the seat of the suppliers.
- 12.4 German law applies, excluding the conflict of law and the CISG.
- 12.5 Should any of these conditions or part of these conditions be or become invalid, this shall not affect the validity of the remaining ones.