

# General Terms and Conditions of Trade (Sales) FAIST Anlagenbau GmbH

## As at: September 2017

- 1. Validity**

The following General Terms and Conditions of Trade apply to all work that we, as contractors, are obliged to perform under the terms of supply agreements, contracts for work and services and other performance contracts concluded with business enterprises, legal entities under public law or special funds under public law. Deviating terms and conditions, in particular conflicting terms and conditions of business, will not be recognised by us.
- 2. Underlying terms of contract**

2.1 All offers and quotations made by our company are not binding. An order / contract can only become effective if we have agreed to it in writing or have given written confirmation. Any documents that are part of an offer or quotation, such as drawings, specifications, technical details may only be considered approximate unless they are expressly designated as binding. Further, it is required that clients provide us with full information regarding operational conditions, particular location conditions and specific operational circumstances.

2.2 We reserve the right to ownership and exclusive utilization of our documents, unless the contract entered into with the client specifies differently. The client is obliged to keep all following documents secret, to not make them accessible to third parties without our consent and to use them for the sole purpose of processing this respective contract: all non-public information, insights and documents received from us or any other information that has become known, such as technical and other data, measurements, technology, operating experience, trade secrets, know-how, compositions and other documentation ("Information").

2.3 After completion of the contract, all documents handed over for the purpose of the order must be returned to us, all copies thereof destroyed and all files deleted. The secrecy obligation also applies for a period of four years after the completion of the contract.

2.3 Provided that the purpose intended in writing remains unaffected, we may make technical adjustments and changes in our services if they are customary or legal regulations or technical improvements and the quality of our service is not reduced.
- 3. Execution documents, delegation**

3.1 The documents required for the execution of an order are to be submitted to us in due time and free of charge.

3.2 The client vouches for the accuracy and completeness of the documents.

3.3 We are entitled to entrust a third party with the execution of an order.
- 4. Sanctions**

4.1 For the purposes of enforcement of the provisions of national and international export control law, you shall be obligated to communicate to us at all times, upon the relevant request, the following information concerning all intermediary and end purchasers (the "Purchasers") of the goods delivered by us to you: name/company; business address; end use and intended purpose of the goods, management and title- and control relationships of the Purchasers, to the extent on hand (the "Information"). Should our request not be made by no later than ten (10) business days prior to the stipulated delivery date, then you shall be obligated to communicate the Information to us unsolicited without undue delay. By the same token, you are to communicate the Information to us unsolicited and without undue delay insofar as any of the Information changes after the Agreement has been entered into. Insofar as the Information is not yet known as of the dates set forth above (e.g., because you are procuring in advance without already known recipients), you shall be obligated to communicate such to us as well.

4.2 When transferring the goods delivered by us to third parties, you shall be obligated to adhere to the respectively applicable rules and regulations of national and international export and re-export control law, and in the course of such transfers, to particularly ensure, using suitable measures, that:

  - you do not, (i) by means of such a transfer to third parties, (ii) by brokering contracts for such goods, (iii) by means of work or services performed, or (iv) by readying other economic resources in connection with such goods, violate any embargo of the European Union, the United States of America, and/or the United Nations – also taking into consideration any restrictions for domestic transactions and any anti-circumvention provisions;
  - such goods are not destined for any prohibited use pertaining to armaments or to nuclear or other kinds of weaponry, or, if approval is required, without having the required approvals, and
  - there is compliance with the provisions of all relevant sanctions lists of the European Union and of the United States of America concerning the business transactions with business enterprises, persons, or organizations set forth therein.

4.3 Our deliveries and services are subject to the reservation that no obstacles due to national or international regulations, including, but not limited to, export control provisions, embargoes, or other sanctions, stand in the way of performance. Moreover, we shall have the right to refuse to perform deliveries and services as long as the Information set forth in Sect. 1 has not been communicated to us.

4.4 You shall indemnify us to the fullest extent against any and all claims which are asserted against us by authorities or by other third parties due to your non-observance of any obligations under export-control law. In addition, in the event of such you shall be obligated to compensate us for any and all damages and expenditures that have arisen.
- 5. Client's obligation to cooperate**

If the place of contractual performance is the client's site / premises, then, unless agreed differently, the client is responsible for the provision of necessary auxiliary personnel, tools and equipment, water, electricity, heating, workrooms etc.. Further, the client is to provide for the entire period of assembly, suitable equipment for assembly / installation, such as scaffolding, ladders, fork-lift trucks with driver and workman's cage, hydraulic ramp with a minimum load capacity of 350 kg (length = 2.2 m, width = 1.0 m with adjustable platform) and sufficient height. If the client fails to fulfil his obligation to cooperate, then we are entitled, but not obliged, to carry out the client's obligations on his behalf and at his expense, subsequent to having given notification. Further legal or contractual rights and claims remain unaffected.
- 6. Form of delivery and transport**

The client is to bear the costs of transport separately. We are to be responsible for the choice of transit route, the choice and use of transport facility, as well as the declaration of goods, unless the client has given express instructions in this matter. We are entitled to make partial deliveries if the partial delivery is usable by the customer within the scope of the contractual purpose, the delivery of the rest of the ordered goods is ensured and the customer incurs no significant additional expenses or costs.
- 7. Time of performance, delay in performance**

7.1 Times of performance / times for performance shall not commence before receipt of a written agreement on all (including the technical) sections of the contract and receipt of an agreed advance payment. We stipulate the precondition that the client fulfils his contractual duties and that all necessary documents, clearances etc. from him are submitted without delay.

7.2 If the performance is delayed due to force majeure (unforeseen circumstances and occurrences beyond our control which could not have been avoided with due commercial care, e.g. labour disputes, war, fire, transport obstacles, raw material deficiency, official measures), the contract will be extended by one month.

7.3 If the client provably suffers damage in the case of a delay caused by us (not deliberately or through gross negligence), the client is entitled to demand compensation for the delay; however, this amount is limited to no more than 0.5% for each week, in total not more than 5% of the value of the part of the service or work which cannot be used in due time as a result of the delay. We reserve the right to prove that the client did not incur any damage or only a significantly lower damage than the aforementioned lump sum. Further claims are directed exclusively in accordance with Section 10.
- 8. Contractual penalty**

claims arising from a contractually agreed penalty can only be asserted immediately after the conditions have been met, and only if the contractual penalty was expressly reserved. A contractual penalty may be judicially adjusted according to § 343 BGB.
- 9. Transfer of risk and acceptance**

9.1 Risk is automatically transferred to the ordering party after the delivery has left our plant; this stipulation shall also apply to part delivery and contracts for which we undertake to carry out other services, such as installation. If acceptance is to be conducted, then risk shall be transferred according to statutory provisions.

9.2 If, at the request of the client or for reasons that he is responsible for, final acceptance of the finished work is postponed beyond the date stipulated in the contract, then risk shall be transferred to the client for the period of postponement.

9.3 The client is obliged to accept the work or the contractual service as soon as the completion is known or displayed, unless the condition of the work precludes acceptance. If a minor defect is ascertained, then the client is not permitted to refuse acceptance. In the event of non-acceptance, the client is to inform the contractor of the reasons and is to set a new reasonable deadline for acceptance if a correction of the defects is possible and can reasonably be expected of both parties. If the work is not accepted, then the reasons are to be recorded in the inspection report. Acceptance shall be deemed given for defects that are not recorded inasmuch as the work is visually free of defects and subsequent damage is the responsibility of the client.

9.4 If the client has taken the service into use, there will be a tacit acceptance two weeks after the first use, provided that we inform the client at the beginning of the period at the latest.

9.5 If the acceptance is delayed without our fault, the acceptance is presumed after the expiry of 14 days since the completion of the work, provided that we inform the client of this acceptance fiction and prompt the client to accept it. This notification is also a request to the client to accept the work.

9.6 In the event of acceptance of parts of the work, the above paragraphs apply accordingly.
- 10. Client's rights when defects have been ascertained, statutory limitation**

10.1 In accordance with the following provisions, we assume liability for the agreed condition of our work when risk is transferred. A so-called quality protection guarantee or guarantee of durability is only given if we have expressly declared this to the client separately in writing.

10.2 We will not assume liability for defects that result from a change in the nature of the work at the request of the client, or for defects that are ascertained on materials supplied or stipulated by the client, or for defects on advanced deliveries requested by him, or as a result of his instructions or as a result of other circumstances for which the client is responsible, as far as we haven't violated our audit and notification obligations.

10.3 Subsequent to transfer of risk, we will assume liability in accordance with clause 9.1 for defects that are ascertained within 12 months; this means that we will determine the method of correcting the defects and at our expense, or we will carry out the work in question a second time, or we will partly correct the defects and carry out the remaining work a second time. The client must notify us in writing of any defects immediately after delivery of the item. In the case of hidden defects, the customer must notify us of the defect in writing immediately after their discovery. We must be given the time and opportunity to take any action we deem necessary to repair the defect or carry out a subsequent delivery.

10.4 The right to assert defects is statute barred when 12 months have elapsed after acceptance or receipt of Delivery of the service. In the event of wilful or fraudulent action or if claims under the Product Liability Act are raised, then the statutory time limits shall apply. The legal deadlines shall also apply if defects are ascertained in a structure, or in the case of supplied items that were used for a structure in accordance with the purpose for which they are intended to be used and which caused that structure's defectiveness.

10.5 In the case of a failure, i.e. the impossibility, unreasonableness, refusal or inappropriate delay of the repair or replacement, the client can withdraw from the contract or reduce the purchase price appropriately. In the case of insignificant defects, such withdrawal is excluded.

10.6 Our right to refuse supplementary performance under statutory conditions remains unaffected.

10.7 Our liability for defects shall be cancelled if the customer or a third party carries out inappropriate changes or repairs without our prior approval. This does not apply if the client proves that the defect existed before the passing of risk. Only in urgent cases of threat to operational safety and to prevent disproportionately large damage, about which we are to be informed immediately, the client can repair the defect themselves or have it repaired by a third party.
- 11. Other liability, exemption from liability**

11.1 We shall be liable for compensation - for whatever legal reason - in cases of intention and gross negligence. In cases of a simple negligence, we shall be only liable:

  - a) for damages resulting from injury to life, body or health,
  - b) for damages resulting from the breach of a material contractual obligation (obligation the fulfilment of which makes the proper execution of the contract possible in the first place and the compliance of which the contracting party relies on); however, the liability in this case is limited to compensation for foreseeable, typically occurring damage. Claims for damages of the client, which are due to contractual penalties of contractual partners of the client, are not foreseeable or typical for the contract.

11.2 The limitations of liability resulting from the preceding paragraph shall not apply if we fraudulently conceal a defect or have assumed a guarantee for the quality of the goods. The same applies to claims of the Client under the Product Liability Act.

11.3 A breach of duty by us is equal to those of our legal representatives or vicarious agents.
- 12. Limitation period**

12.1 Notwithstanding Section 438 (1) no. 3 BGB, the limitation period for claims arising from material and legal defects is one year from the date of delivery. If an acceptance has been agreed, the limitation period begins with the acceptance.

12.2 The above mentioned limitation periods of the purchase right shall also apply to contractual and non-contractual claims for damages of the buyer, which are based on a defect of the goods, unless the application of the statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. The limitation periods of the Product Liability Act remain unaffected in any case. Otherwise, only the statutory limitation periods apply to claims for damages of the buyer pursuant to Section 10.1 a) and b).
- 13. Client's liability to effect compensation**

If the machines or equipment provided by us are lost or damaged on the client's site, without intention or negligence on our part, then the client will be obliged to effect compensation.
- 14. Prices, payment**

14.1 In the absence of any special agreement, the prices are ex factory, including loading at the factory, but excluding packaging and unloading. The sales tax in the respective statutory amount is added to the prices.

14.2 Unless otherwise agreed, payment is to be free of any deductions and to our account as specified below:

  - 1/3 initial payment after receipt of the confirmation of the order,
  - 1/3 as soon as we have informed the ordering party / client that the main components are ready for dispatch,
  - the remaining balance within a month following transfer of risk.

In any case, payment is to be effected without any deduction within 30 days of receipt of the invoice. The date of receipt of payment is decisive at all times. We are legally entitled to demand progress payment or part payment at any time.

14.3 If there are any differences of opinion in the final invoice, the amount undisputed or legally determined shall nevertheless be paid to us.

14.4 Unreserved acceptance of the final payment, which is marked as such, does not rule out subsequent claims. We will endeavour to stipulate a reservation within 6 weeks of receipt of the final payment, and within a further month we will submit a testable invoice for the reserved outstanding accounts, or, if this is not possible, the reservation will be specified in full.
- 15. Reservation of ownership**

15.1 We reserve the right to ownership of all our services and work until full payment of all outstanding accounts that are either due to us or may still be incurred as a result of the business relationship with the ordering party, regardless of the legal justification. If the purchaser violates his or her contractual obligations, we have the right to set back a reasonable period from the contract and to demand that the reserved goods be released and handed over to us. A request for opening of the insolvency procedure of the client entitles us to demand an immediate release. The transport costs incurred for the return of the goods shall be borne by the client.

15.2 The purchaser is entitled to process the reserved goods within the framework of his or her orderly business. The processing takes place for us as a manufacturer. If our ownership is lost as a result, the purchaser transfers to us the ownership of the resulting object in order to secure the claims under 13.1. In the case of combination or mixing of the reserved goods with materials or goods of other owners, we acquire co-ownership of the new object in proportion of the value of our delivery or service to the other mixed or connected items. The purchaser is obliged to keep the item resulting from the connection, mixing or processing free of charge for us.

15.3 Within the regular operation of his business activities, the ordering party is entitled to resell our supplied good or our work or the item created by compounding, mixing, blending, treating or processing; this right can be revoked at any time. Pledges and security payments are irrelevant. The purchaser assigns to us all claims arising from the resale or in connection with the resale with ancillary rights. The assigned claims serve to secure all claims according to 13.1.

15.4 The customer is revocably entitled to collect the claims assigned to us in trust on our behalf.

15.5 If requested to do so by the client, we undertake to release the security that we are entitled to the extent that the realizable value of our security is more than 10% of the value of the debts to be secured.
- 16. Deposit of security**

16.1 Unless otherwise agreed in the contract, security can be provided by depositing cash or by a bank guarantee given by a financial institute or a loan insurance company registered in the European Union. We can select from the different kinds of security and we can replace one form of security by another.

16.2 The client is to return his security immediately as the purpose of the security measures ceases to apply completely or partially.
- 17. Retention ban, offsetting ban**

The client is only entitled to offset or retention rights if his or her claim has been legally established or is undisputed.
- 18. Place of jurisdiction, applicable law**

18.1. In the event of a dispute, efforts must first be undertaken to come to an out of court settlement within two months if possible.

18.2 The sole place of jurisdiction for all disputes regarding the validity of the contract, and that arise from this contractual relationship, shall be Krumbach if the client is a businessman, a legal entity under public law or special funds under public law.

18.3 Only German law shall apply, excluding the UN-Sales Convention and the conflict of laws provisions.