

# General Terms of Delivery of FATH GmbH

applicable with respect to our customers (companies)

## § 1 Validity

(1) All deliveries, services, and offers of the Vendor are to take place exclusively based upon these General Delivery Conditions. These are a component of all agreements that the Vendor makes with its contractual partners (referred to as "Customer" in the following) regarding the deliveries or services offered by such. They also apply to all future deliveries, services, or offers to the customers, even if they are not separately agreed again.

(2) The terms and conditions of the customer or third parties do not apply, even if the Vendor does not separately object to their validity in an isolated case. Even if the Vendor refers to a letter that includes the terms and conditions of the Customer or a third party or refers to such, this does not constitute agreement with the validity of these terms and conditions.

## § 2 Offer and conclusion of contract

(1) All offers of the Vendor are non-binding and subject to alteration, insofar as they are not explicitly characterized as binding or include a certain acceptance period. The Vendor may accept orders within fourteen days after receipt.

(2) Solely the legal relationship between the Vendor and the Customer is governed by the written purchase agreement, including these General Terms of Delivery. This reflects all agreements between the contracting parties on the subject matter of the agreement in their entirety. Verbal commitments of the Vendor before conclusion of this agreement are legally non-binding, and verbal agreements made between the contract parties are replaced by the written agreement unless it is expressly stated that they are binding.

(3) Additions and amendments to the agreements made includes these General Terms of Delivery must be made in writing in order to become effective. With the exception of executives or authorized representatives, the employees of the Vendor are not authorized to make any verbal agreements that differ from this. Submissions via fax are sufficient to preserve the written form. Telecommunication transmissions, in particular via e-mail, are not sufficient.

(4) Vendor information on the subject matter of the delivery or service (e.g. weights, dimensions, utility values, load capacity, tolerances, and technical data) as well as our depictions (e.g. drawings and illustrations) are only approximate unless application with respect to the contractually intended purpose requires strict conformity. These are not guaranteed characteristics, rather descriptions or characterizations of the delivery or service. Customary deviations and deviations, which result from legal provisions or represent technical improvements, as well as the replacement of components with parts of equal value, are permitted provided that they do not impair application with respect to the contractually intended purpose. The Vendor hereby reserves the right to fall short of or exceed the order quantity by the customary amount of 10%.

(5) The Vendor hereby reserves the title or copyright to all offers and cost estimates submitted by the Vendor, as well as any drawings, illustrations, calculations, brochures, catalogs, models, tools, and other documents and resources provided to the Customer. The Customer may not make these objects, as such or as regards to their content, accessible

to third parties, disclose them, or reproduce them independently or through third parties without the express consent of the Vendor. The Customer must return these objects in their entirety to the Vendor and destroy any potential copies made if the Customer no longer needs them for ordinary business activity or if negotiations do not lead to the conclusion of an agreement.

### **§ 3 Prices and payment**

(1) The prices apply to the scope of services and delivery given in the order confirmations. Additional or special services are calculated separately. The prices are quoted in EURO ex works plus packaging, shipping (shipping lump sum), statutory value added tax, customs duties for export deliveries, as well as fees and other public taxes.

(2) Insofar as the agreed prices are based on the Vendor's list prices and the delivery is to be made more than four months after the conclusion of the agreement, the Vendor's list prices on delivery apply (each less an agreed percentage or fixed discount).

(3) Invoice amounts are to be paid within thirty days without delay, provided there have been no written agreements made that contract this. Receipt on the part of the Vendor dictates the payment date. Checks are considered as payment only when they are redeemed. If the Customer does not pay by the due date, the outstanding sums accrue interest beginning on the due date in the amount of 5% p.a. The application of higher interest and further damages in case of default remains unaffected.

(4) The offsetting of counterclaims of the Customer or the retention of payments due to such claims is only permitted if the counterclaims are undisputed or legally binding.

(5) The Vendor is hereby authorized to execute or provide outstanding deliveries or services only against advance payment or collateral security if the Vendor becomes aware of circumstances after conclusion of the contract which are likely to substantially reduce the creditworthiness of the Customer and through which the payment of outstanding claims of the Vendor by the Customer from the respective contractual relationship (including from other individual orders to which the same framework agreement applies) is jeopardized.

### **§ 4 Delivery and delivery period**

(1) Deliveries are made ex works.

(2) Periods and deadlines for deliveries and services provided by the Vendor are only approximate, unless a fixed period or deadline has been expressly accepted or agreed. If shipment has been agreed, delivery periods and delivery dates refer to the time of transfer to the freight forwarder, carrier, or other third party commissioned with transport.

(3) The Vendor may - without prejudice to its rights arising from delay on the part of the Customer - request that the Customer extend the delivery and performance periods or postpone delivery and service deadlines for the period in which the Customer does not meet its contractual obligations to the Vendor.

(4) The Vendor is not liable for the impossibility of delivery or delays in delivery, insofar as these are due to force majeure or other unforeseeable events at the time of conclusion of the contract (e.g. breakdowns of any kind, difficulties in material or energy procurement, delays in transport, strikes, legitimate lockouts, a lack of workers, energy, or raw materials, difficulties in obtaining necessary regulatory approvals, regulatory action, or outstanding, incorrect, or untimely

supplies from suppliers) for which the Vendor is not responsible. Provided that such events make it significantly more difficult or impossible for the Vendor to provide delivery or services, and this hindrance is not of a temporary duration, the Vendor is entitled to withdraw from the agreement. In the event of obstacles of a temporary duration, the delivery or service periods shall be extended or the delivery or service deadlines shall be postponed by the duration of the hindrance plus a reasonable start-up period. Insofar as the Customer can not reasonably be expected to accept the delivery or service as a result of the delay, the Customer may withdraw from the agreement by means of an immediate written statement to the Vendor.

(5) The Vendor is only authorized to provide partial deliveries if

- the partial delivery can be used within the scope of the contractual intended purpose on the part of the Customer,
- delivery of the remaining goods ordered is guaranteed, and
- this does not subject the Customer to considerable additional costs or expenses (unless the Vendor agrees to cover these costs).

(6) If the Vendor defaults on a delivery or service or if a delivery or service becomes impossible for whatever reason, the Vendor's liability for damage compensation is limited in accordance with § 8 of these General Terms of Delivery.

(7) Our prior consent is required to return defect-free goods without legal or contractually agreed cause. In the event that goods are returned but this is not legally, contractually, or otherwise required, the Vendor may claim a lump sum in the amount of 25% of the net invoice amount of the returned goods as lost profit. The purchaser remains entitled to prove that the Vendor suffered no or minor damage. The purchaser must bear the re-storage costs of the goods on the part of the Vendor, in addition to the lost profit.

## **§ 5 Place of performance, shipment, packaging, transfer of risk, acceptance**

(1) The place of performance for all obligations arising from the contractual relationship is the registered office of the Vendor, provided this is not stipulated otherwise. If the Vendor is also responsible for installation, the place of performance is the place where installation is to be carried out.

(2) The shipping method and packaging are subject to the conscientious discretion of the Vendor.

(3) The risk shall pass to the Customer at the latest upon handover of the delivery object (whereby the beginning of the loading process applies) to the freight forwarder, carrier, or other third party designated for conducting shipment. This also applies in the event of partial deliveries, or the Vendor provides additional services (e.g. shipment or installation). If the shipment or transfer is delayed as a result of a circumstance caused by the Customer, the risk shall pass to the Customer from the day on which the delivery object is ready for shipment and the Vendor has notified the Customer of this.

(4) The Customer shall bear the storage costs following the transfer of risk. In the event of storage on the part of the Vendor, the storage costs are 0.25% of the invoice amount of the delivery goods to be stored per week elapsed. The right to assert and prove further or lower storage costs remain reserved.

(5) Shipment shall only be insured by the Vendor against theft, breakage, damage due to transport, fire and, water, or other insurable risks at the express request of the Customer and at the Vendor's expense.

(6) Insofar as acceptance must be given, the purchased object shall be deemed accepted if

- the delivery and installation are complete, provided the Vendor is also responsible for installation,
- the Vendor has provided notice of this to the Customer in accordance with § 5 (6) of this document and has requested that the Customer accept,
- seven business days have passed since delivery or installation, or the Customer has begun using the purchased object (e.g. put the delivered system into operation) and, in this case, six business days have passed since delivery or installation, and
- the Customer has failed to accept the purchased good within this period for a reason other than one than a defect indicated to the Vendor which makes the use of the purchased object impossible or substantially impairs such.

### **§ 6 Warranty, material defects**

(1) The warranty period is one year following delivery or, provided acceptance is necessary, following acceptance.

(2) The delivered items must be carefully inspected immediately after delivery to the Customer or to the third party appointed by such. They are considered accepted if the Vendor does not receive a written notice of defects with respect to obvious defects or other defects that were detected during an immediate, careful inspection within two business days after delivery of the delivery object, or otherwise within two business days after discovery of the defect, or at any earlier time at which the defect was detected during normal use of the delivery object by the Customer without closer examination in accordance with the manner specified in § 2 (2) Clause 6. At the request of the Vendor, the subject of the complaint shall be returned to the Vendor carriage paid. In the event of a legitimate defect complaint, the Vendor shall pay the cost of the cheapest shipping route. This does not apply if the cost increases because the delivery item is located in a location other than where it is intended to be used.

(3) For material defects in the delivered items, the Vendor is obligated and authorized to rectify or replace the goods after a suitable decision period. In the event that this does not occur, meaning rectification or replacement is impossible, unreasonable, refused, or inappropriately delayed, the Customer may withdraw from the agreement or suitably reduce the purchase price.

(4) If the defect is the fault of the Vendor, the Customer may request damage compensation according to the conditions specified in § 8.

(5) For defects in components from other manufacturers, which the Vendor cannot eliminate for legal or practical reasons, the Vendor shall assert its warranty claims against the manufacturers and suppliers for the account of the Customer or assign them to the Customer. Warranty claims against the Vendor exist for such defects under the other conditions and in accordance with these General Terms of Delivery only if the legal enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or futile, due to insolvency for example. The limitation period of the respective warranty claims of the Customer against the Vendor is inhibited during the duration of the legal dispute.

(6) The warranty lapses if the Customer modifies the delivery object without the consent of the Vendor, or has the delivery object modified by third parties, thus making it impossible or unreasonably difficult to eliminate the defect. In

each case, the Customer bears the additional costs of defect elimination resulting from the modification.

(7) Used items may be delivered if agreed in individual cases with the Customer under exclusion of any warranty for material defects.

## **§ 7 Property rights**

(1) The Vendor is in accordance with § 7 of this document to the effect that the delivery item is free of intellectual property rights or copyrights of third parties. Each contracting party shall immediately inform the other contracting partner in writing should claims due to the violation of such rights be asserted against itself.

(2) In the event that the delivery object violates an industrial property right or copyright of a third party, the Vendor shall, after a decision process and at own cost, modify or replace the delivery object in such a way that no rights of third parties continue to be violated but the delivery object continues to comply with the contractually agreed function, or grant the Customer usage rights by concluding a license agreement. If the Vendor cannot perform such within a suitable period, the Customer is authorized to entitled from the agreement or suitably lower the purchase price. Any claims for damage of the Customer are subject to the limitations in § 8 of these General Terms of Delivery.

(3) For legal infringements stemming from products from other manufacturers delivered by the Vendor, the Vendor shall assert its claims against the manufacturer and preliminary suppliers for the account of the Customer, or transfer such to the Customer. Claims against the Vendor exist in these cases in accordance with § 7 of this document only if the legal enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or futile, due to insolvency for example.

## **§ 8 Liability and damage compensation due to fault**

(1) The liability of the Vendor for damages, for whatever legal reason, in particular impossibility, delay, inadequate or incorrect delivery, breach of contract, breach of obligations in contract negotiations, and tort, is limited, insofar as the Vendor is at fault in each case, in accordance with § 8 of this document.

(2) The Vendor is not liable in the event of simple negligence on the part of its agencies, legal representatives, employees, or other vicarious persons, provided this does not concern a violation of essential contractual obligations. The essential contractual components are the obligation to provide timely delivery and installation of the essential defect-free delivery object as well as the obligation to provide advice, protection, and care which enables the Customer to use the contractual object or protect the life or limb of the employees of the Customer or protect such property from significant damage.

(3) If the Vendor is fundamentally liable for damages according to § 8 (2), this liability is limited to damages which the Vendor foresaw upon conclusion of the contract as a possible consequence of a breach of contract or which the Vendor should have foreseen when applying due diligence. Indirect damage and consequential damage, which are the result of defects to the delivery object, are also only liable for compensation insofar as such damage can typically be expected in the event that the delivery object is used as intended.

(4) In the event of liability due to simple negligence, the Vendor's obligation to pay compensation for property damage and resulting further financial losses is limited to an amount of EUR 5,000,000 per claim (corresponding to the current

coverage of its product liability or liability insurance), even if this concerns a breach of essential contractual obligations.

(5) The existing limitations and exclusions of liability apply in the same scope in favor of the Vendor's agencies, legal representatives, employees, or other vicarious persons.

(6) Insofar as the Vendor provides technical information or acts in an advisory capacity and this information or advice is not a component of the contractually agreed scope of services to be rendered by the Vendor, this is done free of charge and to the exclusion of any liability.

(7) The limitations in § 8 of this document do not apply for the liability of the Vendor for willful action, for guaranteed characteristics, for injury to life, limb, or health, or under the German Product Liability Act.

### **§ 9 Retention of title**

(1) The following agreed retention of title serves to secure all present and future claims of the Vendor against the purchaser from the existing supply relationship between the contracting parties (including balance claims from a current account relationship limited to this supply relationship).

(2) The good delivered to the by the Vendor to the purchaser remains the property of the Vendor until all secured claims are paid in full. The goods as well as the goods, which supersede them after this clause and are subject to retention of title, are hereinafter referred to as reserved goods.

(3) The purchaser shall hold the reserved goods free of charge for the Vendor.

(4) The purchaser is entitled to process and sell the goods in the ordinary course of business upon the occurrence of an enforcement event (Section 9). Collateral pledges and security transfers are not permitted.

(5) If the reserved goods are processed by the purchaser, it is hereby agreed that processing shall take place in the name and for the account of the Vendor as the manufacturer, and the Vendor shall immediately acquire the property or - if processing includes materials from multiple owners, or the value of the processed item is higher than the value of the reserved goods - the co-ownership (fractional ownership) of the newly created object shall be in proportion to the value of the reserved goods to the value of the newly created item. In the event that no such acquisition of ownership on the part of the Vendor should occur, the purchaser immediately transfers future ownership or - in the relationship given above - co-ownership of the newly created item as security to the Vendor. If the goods subject to retention of title are combined with other items or are inseparably mixed, and if one of the other items is to be regarded as the primary item, the Vendor, insofar as the primary item belongs to such, proportionally transfers co-ownership of the unitary item to the purchaser in the manner specified in Clause 1.

(6) In the event that the goods subject to retention of title are resold, the purchaser hereby assigns to the Vendor, by way of security, the resulting claim against the purchaser - in the case of co-ownership on the part of the Vendor of the reserved goods in proportion to the co-ownership share. The same applies to other claims that take the place of the reserved goods or otherwise arise in respect to the reserved goods, such as insurance claims or claims arising from tort in the event of loss or destruction. The Vendor hereby authorizes the purchaser to collect the claims assigned to the Vendor in its own name. The Vendor may only revoke this collection authorization in an enforcement event.

(7) If third parties access the goods subject to retention of title, in particular by way of seizure, the purchaser will

immediately inform them of the property of the Vendor and inform the Vendor in order to enable such to enforce its property rights. If the third party is not able to reimburse the Vendor for the judicial or extrajudicial costs arising from this context, the purchaser shall be liable to the Vendor for this.

(8) The Vendor shall release the goods subject to retention of title as well as the goods or claims which supersede them upon request at its own discretion, provided that their value exceeds the amount of the secured claims by more than 50%.

(9) If the Vendor withdraws from the agreement in event of a breach of contract on the part of the purchaser (enforcement event) - in particular payment default - the Vendor is entitled to demand restitution of the reserved goods.

#### **§ 10 Final provisions**

(1) The place of jurisdiction for any disputes arising from the business relationship between the Vendor and the Customer is, at the discretion of the Vendor, the registered office of the Vendor or the registered office of the Customer. The registered office of the Vendor is the sole place of jurisdiction for complaints against the Vendor. Mandatory statutory provisions on exclusive jurisdictions remain unaffected by this provision.

(2) The relationships between the Vendor and the Customer are exclusively subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods from April 11, 1980 (CISG) does not apply.

**Note:** Our Terms and Conditions apply only to contractors, as evidenced by the scope of application. Consumers who normally reside abroad always have the right to invoke the law of the country in which they reside, of course.

(3) Insofar as the agreement or these General Terms of Delivery include regulatory gaps, those legally effective provisions shall be deemed agreed which the contracting parties would have agreed in accordance with the economic objectives of the agreement and the purpose of these General Terms of Delivery, if they had known of the regulatory gap.

Note:

The Customer hereby acknowledges that the Vendor stores data from the contractual relationship in accordance with § 28 of the Federal Data Protection Act for the purpose of data processing and reserves the right to transfer the data to third parties (for example, insurance companies) for the fulfillment of the agreement.