

# **General Terms of Delivery of FATH Kft. for contracts concluded with ventures**

**Effective from the 07.09.2022**

## **Clause 1 Validity**

(1) All deliveries, services and offers by and of FATH Kft. (hereinafter 'the Seller') are provided exclusively on the basis of these General Terms of Delivery. They form part of all contracts which the seller concludes with its contractual partners (also referred to hereinbelow as the "Clients") relating to the deliveries and services offered by it. They also apply to all future deliveries, services or offers to the client, even if they are not the subject of a further separate agreement.

(2) The terms and conditions of the Client or of third parties do not apply, even if the seller does not separately exclude their validity in the case concerned. Even if the seller refers to correspondence which contains terms and conditions of the Client or of a third party or makes mention of such, this does not constitute any agreement to the validity of such terms and conditions.

## **Clause 2 Offer and conclusion of the contract**

(1) All offers by the seller are subject to change and non-binding insofar as they are not expressly identified as binding or contain a specific acceptance period, unless the Seller expressly declares its intention to conclude a contract in the offer or expressly specifies the period of the Seller's obligation to make an offer [ Art.6:64 of Hungarian Civil Code (Ptk.)] The Seller shall declare its acceptance of the Buyer's orders or instructions within 14 days of receipt. In the event of a shortage of stock or for any other reason, the Seller is entitled to offer the Buyer an alternative product and to invite the Buyer to make a declaration of acceptance or rejection of the alternative product.

(2) The sole authoritative document for the legal relations between the seller and the Client is the purchase contract concluded in writing, including these General Terms of Delivery. This fully reflects all agreements between the contracting parties on the object of the contract. Oral promises by the seller before the conclusion of this contract are not legally binding and oral agreements by the contracting parties are replaced by the written contract unless it is expressly stated therein that they will continue to be binding in each case.

(3) Effective supplements and amendments to the agreements reached, including these General Terms of Delivery, must be in writing. With the exception of executives or authorized representatives, the buyer's employees are not entitled to reach oral agreements which differ herefrom. Transmission by fax is sufficient to comply with the written form, otherwise telecommunication, in particular e-mail, is not sufficient.

(4) Information from the seller on the object of the delivery or service (e.g. weight, dimensions, utility value, capacity, tolerances and technical data) as well as our representations of the same

(e.g. drawings and illustrations) are only approximately applicable, unless usability for the contractually envisaged purpose requires precise conformity. These are not guaranteed characteristics but descriptions or identifications of the delivery or service. Differences which are customary in the trade and differences which are the result of legal provisions or represent technical improvements, as well as the replacement of components with parts of equivalent value, are permissible insofar as they do not detract from usability for the contractually envisaged purpose. The seller reserves the right to fall below or exceed the quantity ordered by a quantity customary in the trade of 10%.

(5) The seller retains ownership of or copyright for all offers and cost estimates issued by it as well as drawings, illustrations, calculations, brochures, catalogs, models, tools and other documents and resources made available to the Client. Without the express consent of the seller, the Client may not make these items, or the content thereof, accessible to third parties, make them known to third parties, or use or reproduce them either itself or through a third party. On request by the seller, it must return these items thereto in their entirety and, where applicable, destroy any copies made thereof if they are no longer needed by it in the proper course of business or if negotiations do not result in the conclusion of a contract.

(6) The seller is entitled to withdraw from the contract if a suspicion arises that the buyer has the intention to use the ordered product to manufacture weapons.

### **Clause 3 Prices and payment**

(1) Prices are valid for the scope of services and deliveries listed in the order confirmations. Additional or special services are invoiced separately. Prices are understood in currencies specified in the Seller's confirmation (in Forint or in EUR) ex works plus packaging, shipment (flat-rate fee for forwarding), statutory value added tax, customs for export deliveries plus duties and other public charges.

(2) Insofar as the prices agreed are based on the seller's list prices and delivery is not to be made until more than four months after the conclusion of the contract, the seller's list prices valid at the time of delivery apply (in each case less an agreed percentage or fixed discount).

(3) Unless otherwise agreed in writing, sums invoiced are to be paid within thirty days without any discount. If the total value of the order exceeds 40.000.- EUR, the payment shall take place as follows: 50% at the time of order, 40% when the goods are ready for delivery, 10% within 15 days after delivery. Upon failure by the Buyer to perform payment of the amount specified in the invoice at due date, the Buyer shall pay interest on delay to the Seller according to Clause (1) § 6:155 of Ptk. Beyond the above, the Seller shall have the power to apply the legal consequences specified in Act Nr. IX of 2016.

(4) Offsetting with counterclaims of the Client or the retention of payments on account of such claims is only permissible insofar as the counterclaims are undisputed or finally and bindingly established.

(5) The seller is entitled to make outstanding deliveries or provide outstanding services only against prior payment or deposit if, after the conclusion of the contract, circumstances become known to it which might considerably reduce the Client's creditworthiness and on account of which payment by the Client of the seller's outstanding demands from the contractual relationship concerned (including those from other individual orders for which the same framework contract applies) is put at risk.

#### **Clause 4 Delivery and delivery period**

(1) Deliveries are ex works, unless otherwise agreed by the Parties.

(2) Terms and deadlines announced by the seller in advance for deliveries and services are only ever approximate unless a fixed term or a fixed deadline is expressly promised or agreed. Insofar as shipment has been agreed, delivery periods and delivery deadlines relate to the time of handover to the forwarding agent, freight carrier or other third party commissioned for transportation.

(3) Notwithstanding its rights with respect to default by the Client, the seller may ask the Client for an extension to the period allowed for delivery or service or a postponement of the deadline set for delivery or service by the period of time for which the Client fails to meet its contractual obligations with respect to the seller. [Clause (1) § 6:139 of Ptk.]

(4) The seller is not liable for impossibility of delivery or for delays in delivery insofar as these have been caused by force majeure or other events which were not foreseeable at the time the contract was concluded (e.g. operating disruptions of any kind, difficulties in procuring materials or power, transport delays, strikes, epidemic, governmental or administrative lockouts, workforce, energy or raw materials shortages, difficulties in procuring necessary official approvals, official measures or non-delivery or incorrect or late delivery by suppliers), for which the seller is not responsible. Insofar as such events make it considerably more difficult or impossible for the seller to provide its supplies or services and the obstacle is not merely of a temporary duration, the seller is entitled to withdraw from the contract. In case of obstacles of a temporary duration, the delivery periods or performance periods will be extended or the delivery deadlines or performance deadlines will be postponed by the period of the obstruction plus a reasonable run-in period. Insofar as the Client cannot be expected to accept the delivery or service as a result of the delay, it may withdraw from the contract through immediate written notification to the seller.

(5) The seller is only entitled to make part deliveries if

- the part delivery is usable by the Client in the context of the use intended according to the contract,
- the delivery of the rest of the goods ordered is ensured and
- this does not mean that the Client incurs any considerable extra expense or additional costs (unless the seller declares that it is prepared to accept these costs).

(6) If the seller falls behind with a delivery or service or if it is unable to provide a delivery or service for whatever reason, then the seller's liability is limited to compensation in accordance

with Clause 8 of these General Terms of Delivery.

(7) The returning of non-defective goods without any legal or contractually agreed reason requires our prior consent. If goods are taken back for reasons not imposed by law, contract or otherwise, the seller may claim a flat-rate sum of 25% of the net invoice amount of the goods taken back as lost profit. The buyer is entitled to provide evidence that the seller has incurred no loss or a smaller loss. The buyer, in addition to the lost profit, also has to bear the costs of returning the goods to the seller.

(8) The Seller is entitled to early delivery, unless otherwise agreed by the Parties.

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

(1) The place of performance for all obligations arising out of the contractual relations is, unless otherwise specified, the registered office of the seller. If the seller is also responsible for installation, the place of performance is the place where installation has to be carried out.

(2) The means of shipment and packaging are subject to the due discretion of the seller.

(3) At the latest, risk is transferred to the Client on handover of the item being delivered to the forwarding agent, freight carrier or other third party specified for carrying out shipping (commencement of the loading process being decisive). This also applies if part deliveries are made or the seller has taken on other services (e.g. shipment or installation). If shipment or handover is delayed owing to circumstances attributable to the Client, risk is transferred to the Client on the day when the item being delivered is ready for shipment and the seller has notified the Client thereof.

(4) Storage costs after the transfer of risk will be borne by the Client. In case of storage by the seller, the storage costs amount to 0.25% of the invoice amount of the items being delivered that are to be stored per full week. The right to claim for additional storage costs or request proof of lower storage costs remains reserved.

(5) The consignment will be insured by the seller against theft, breakage, damage in transit, fire or water damage or other insurable risks only at the express wish of the Client and at the costs thereof.

(6) If acceptance has to be provided, the purchased product is deemed to have been accepted if

- delivery and, insofar as the seller is also responsible for installation, installation has been completed,
- the seller has notified the Client hereof, making reference to tacit acceptance according to the present Clause 5(6), and requested acceptance,
- three working days have passed since delivery or installation or the Client has started using the purchased product (e.g. the delivered equipment has been put into operation) and, in this case, six working days have passed since delivery or installation, and
- the Client has failed to accept the goods within this period for a reason other than owing to a defect notified to the seller that makes use of the purchased product impossible or significantly impairs it.

## **Clause 6 Warranty, material defects**

(1) The warranty period is one year as from delivery or, insofar as acceptance is necessary, as from acceptance. [§ 6:163. Clause (1) of the Hungarian Civil Code]

(2) The items delivered are to be carefully inspected immediately after their delivery to the Client or to the third party specified by it. They are considered to have been approved if no written notice of defects is received by the seller with respect to apparent defects or other defects which were identifiable during an immediate, careful inspection within three working days after delivery of the item delivered, or otherwise within three working days of discovery of the defect or any earlier time when the defect was recognizable by the Client during normal use of the item delivered without closer inspection, in the form specified in the last sentence of Clause (3) of § 2. At the request of the seller, the item delivered to which the complaint relates is to be sent back to the seller carriage paid. If the notice of defects is justified, the seller will reimburse the costs of the cheapest method of shipment; this does not apply insofar as the costs rise because the item delivered is located somewhere other than the place of intended use.

(3) In case of material defects in the items delivered, the seller is initially obliged and entitled to repair them or deliver replacements according to its choice to be made within a reasonable period. In the event of failure, i.e. repair or replacement delivery is impossible, unreasonable, refused or disproportionately delayed, the Client may withdraw from the contract or reduce the purchase price by a reasonable amount. The Buyer acknowledges that the wooden box packaging of Flowsort diverters must be safeguarded during the warranty period. If the Buyer breaches this obligation, the Seller shall be entitled to charge the Buyer for the cost of the wooden box packaging necessary for the potential delivery of the diverter, even if the Buyer's warranty claim is otherwise justified.

(4) If the seller is to blame for a defect, the Client may demand compensation under the conditions stipulated in Clause 8.

(5) In the event of defects in components from other manufacturers, which the seller cannot remedy for reasons of licensing law or for factual reasons, then, at its choice, the seller will make its warranty claims against the manufacturer and supplier on the Client's account or transfer title to the Client. Warranty claims against the seller exist for defects of this kind under other conditions and in accordance with these General Terms of Delivery only if the legal enforcement of the abovementioned claims against the manufacturer and supplier was unsuccessful or is futile, for example because of insolvency. For the duration of the legal dispute, the period of limitation is suspended as regards the Client's warranty claims in this matter against the seller [§ 6:24 of Ptk.].

(6) The warranty becomes invalid if the Client modifies the item delivered without the approval of the seller or allows it to be modified by a third party and remedying of the defect is made impossible or is unreasonably complicated on account thereof. In each case, the Client must bear the additional costs of remedying defects caused by the modification.

(7) A delivery of used items agreed with the Client in any given case is carried out under exclusion of any warranty for material defects.

### **Clause 7 Property rights**

(1) In accordance with the present Clause 7, the seller vouches for the fact that the item delivered is free of third party industrial property rights or copyright. Each contractual partner will immediately inform the other contractual partner in writing in the event that claims are made against it due to the infringement of such rights.

(2) In the event that the item delivered infringes a third party industrial property right or copyright, then, according to its choice and at its own costs, the seller will either alter or exchange the item delivered in such a way that it no longer infringes any third party rights, but so that the item delivered continues to fulfill its contractually agreed functions, or procure the right of use for the Client by concluding a license contract. If it does not manage to do this within a reasonable period, the Client is entitled to withdraw from the contract or reduce the purchase price by a reasonable amount. Any claims for compensation by the Client are subject to the limitations laid down in Clause 8 of these General Terms of Delivery.

(3) In event of infringements of rights by products from other manufacturers delivered by the seller, then, according to its choice, the seller will make its claims against the manufacturer and previous supplier on the Client's account or transfer title to the Client. Claims against the seller exist in this case in accordance with the present Clause 7 only if the legal enforcement of the abovementioned claims against the manufacturer and previous supplier was unsuccessful or is futile, for example because of insolvency.

### **Clause 8 Liability for damages in case of default**

(1) The seller's liability for damages, regardless of the legal grounds but in particular due to impossibility, delay, defective or incorrect delivery, contractual infringement, infringement of duties during contract negotiations and action in tort is, insofar as there is a question of blame in each case, limited in accordance with the present Clause 8.

(2) The seller is not liable in the event of simple negligence by its organs, legal representatives, employees or other vicarious agents, insofar as this does not amount to an infringement of essential obligations. Considered essential to the contract are the obligations for prompt delivery and installation of the delivered item free of significant defects and duties of consultation, protection and care, which are supposed to enable use of the delivered item in accordance with the contract by the Client or which serve the purpose of protecting the life and limb of personnel of the Client or protection of the Client's property against considerable damage.

(3) Insofar as the seller is liable for damages on the grounds of and in accordance with Clause 8(2), this liability is limited to damage which the seller has foreseen when concluding the contract as a possible consequence of a contractual infringement or which, by applying due care and attention, it should have foreseen. Furthermore, indirect damage and consequential damage resulting from defects in the item delivered are only subject to compensation insofar as such damage is typically to be expected when using the item delivered as intended.

(4) In the event of liability for simple negligence, the seller's obligation to provide compensation for property damage and further damage to assets resulting therefrom is limited to an amount of HUF 150,000,000 per claim (corresponding to the current sum covered under its product liability insurance or third party insurance), even if the case relates to an infringement of obligations essential to the contract.

(5) The above liability exclusions and limitations apply to the same extent in favor of the seller's organs, legal representatives, employees and other vicarious agents.

(6) Insofar as the seller provides technical information or acts as an adviser and this information or advice is not part of the contractually agreed scope of performance owed by it, this is done free of charge and with the exclusion of any liability.

(7) The limitations of the present Clause 8 do not apply to the seller's liability on account of deliberate actions, to guaranteed characteristics, on account of injury to life, limb or health, further to product liability [§ 6:550-559 of Ptk.].

### **Clause 9 Reservation of ownership**

(1) The following agreed reservation of ownership serves as security for any demands of the seller against the buyer, existing now and in the future, arising out of the delivery relationship existing between the contractual partners (including balance claims from a current account relationship limited to the present delivery relationship).

(2) The goods delivered by the seller to the buyer remain the seller's property until full payment of all secured demands. The goods, as well as the goods included in the reservation of ownership to take their place in accordance with the present clause, are referred to hereinbelow as reserved goods.

(3) The buyer stores the reserved goods free of charge for the seller.

(4) The buyer is entitled to process and sell the reserved goods in the normal course of business up to the point of instigation of recovery (paragraph 9). Pledging as collateral and transfer by way of security are not permissible.

(5) If the reserved goods are processed by the buyer then it is agreed that the processing is carried out in the name and on behalf of the seller as manufacturer and the seller directly acquires ownership or, if the processing is carried out with materials from a number of owners or the value of the processed objects is higher than the value of the reserved goods, co-

ownership (fractional owner-ship) of the newly produced objects in relation to the value of the reserved goods to the value of the newly produced object. In the event that the seller should not acquire such ownership, the buyer hereby transfers its future ownership or, in the abovementioned circumstances, co-ownership of the newly produced object as security to the seller. If the reserved goods are combined or inseparably mixed with other objects to form an integral object and if one of the other objects is to be regarded as the main object, then, insofar as the main object belongs to it, the seller transfers co-ownership of the integral object to the buyer on a pro rata basis in the ratio specified in the 1st sentence.

(6) In the event that the reserved goods are sold on, the buyer hereby transfers the resulting claim against the acquirer or, in case of co-ownership of the seller of the reserved goods on a pro rata basis according to the proportion of co-ownership, to the seller by way of security. The same applies to other claims which take the place of the reserved goods or which otherwise arise with reference to the reserved goods, such as insurance claims or claims arising from actions in tort in case of loss or destruction. The seller revocably authorizes the buyer to collect the claims transferred to the seller in its own name. The seller may only revoke this power of collection in case of recovery.

(7) If a third party takes possession of the reserved goods, in particular by distress, the buyer will immediately point out the seller's ownership thereto and inform the seller thereof in order to allow it to implement its rights of ownership. Insofar as the third party is not in a position to compensate the seller for legal or out-of-court costs incurred in this connection, the buyer is liable with respect to the seller for this.

(8) On request and if it so chooses, the seller will release the reserved goods and/or the objects or claims taking their place, insofar as their value exceeds the amount of the secured claims by more than 50%.

(9) If, in the event of behavior by the buyer contrary to the contract, in particular late payment, the seller withdraws from the contract (case of recovery), it is entitled to demand the reserved goods.

#### **Clause 10 Concluding provisions**

(1) The legal venue for all and any disputes arising out of the business relations between the seller and the Client is, according to the seller's choice, the registered office of the seller or the registered office of the Client. For claims against the seller, the registered office of the seller is the exclusive legal venue.

(2) The relations between the seller and the Client are exclusively subject to the laws of the Republic of Hungary. The United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980 (CISG) does not apply.

(3) Insofar as the contract or these General Terms of Delivery contain loopholes, the current provisions of the Hungarian law shall be governing – the contractual partners would otherwise

have agreed according to the commercial aims of the contract and the purpose of these General Terms of Delivery.

(4) If any provision of this General Terms or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this General Terms and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. The parties are obliged to replace the invalid or unenforceable provision by a valid and enforceable provision which is as close as possible to the purpose of the invalid or unenforceable provision.

(5) The Seller's processing of personal data and Privacy Policy is available at the following link: [www.fath24.hu/downloads](http://www.fath24.hu/downloads)

(6) Furthermore, the Buyer hereby agrees that the Seller is entitled to send newsletters regarding general information, current promotions and new products on a regular or recurrent basis to the contact e-mail address given by the Buyer. If the Buyer no longer would like to remain on the mailing list, in order to not receive further newsletters, he/she can unsubscribe at any time by clicking on the "unsubscribe" link provided in the email.