



Fife-Tidland GmbH

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General Terms and Conditions of Fife-Tidland GmbH

1. General field of application

1.1. The following General Terms and Conditions apply to all business relations between ourselves and the Purchasers of our products or services (hereinafter referred to as the "Purchaser"). They apply only to Purchasers which are businesses under the terms of § 14 of the German Civil Code.

The present Terms and Conditions shall also apply to all future transactions with the Purchaser. The particular text applicable upon signature of the contract shall apply in each case.

1.2. The Terms and Conditions of the Purchaser will not be acknowledged unless the validity thereof is approved in writing by ourselves. The terms and conditions of the Purchaser shall even apply when we have made deliveries or performed services, without reservation, with [full] knowledge of the Terms and Conditions of the Purchaser, without renewed objection.

1.3. We reserve full intellectual property rights and copyright to all cost estimates, drawings and similar information, both tangible and intangible – including in electronic format. These may not be divulged to third parties. To the extent to which our deliveries and services are made or rendered in accordance with drawings, prototypes, patterns or other documentation provided by the Purchaser, the Purchaser provides surety against any violation of copyright or related rights of third parties.

2. Conclusion of the contract; confirmation of the order

2.1. Our offers are without engagement. Our offers shall only be deemed binding when expressly designated as such, in the absence of which they shall be considered merely solicitations to make an offer.

2.2. The Purchaser vouches for the correctness of all data and documentation made available by him, such as drawings, gauges, prototypes or the like. We shall not be required to verify Purchaser data for correctness or completeness. If, upon Purchaser request, the data required for contractual fulfilment is provided by ourselves, it shall be incumbent upon the Purchaser to check and approve all such data provided by ourselves.

2.3. Declarations made by ourselves shall only be binding when signed by a member of the Management duly authorised for that purpose. Oral statements and agreements require confirmation in writing to be valid. Orders shall be deemed accepted by ourselves only when confirmed in writing by ourselves; all accessory agreements and amendments must be in writing.

2.4. Immaterial deviations from the data contained in our offers, catalogues and prospectuses shall be accepted as contractually valid, unless they affect the contractual use of the object of the contract. Such deviations shall require no advance notice. Should changes be made to the indicated measurements, weighs, illustrations, or drawings by reason of production factors or on other grounds, the Purchaser will be informed of such changes in writing. If the Purchaser fails to reject such changes within two weeks of receipt of notification of said changes, or if the Purchaser



accepts such changes by written confirmation, the contract shall be based upon such changed fulfilment data only. In such case, no further confirmation on our part shall be required.

2.5. Obvious errors, misprints and miscalculations shall not be binding, and shall under no circumstances form the basis for a claim to fulfilment.

2.6. Prototypes will only be delivered against invoice.

3. Delivery, delivery periods and transfer of risk

3.1. The place of fulfilment for all contractual obligations on our part shall be our headquarters and/or factory/warehouse, to be communicated to the Purchaser in the order confirmation. All costs of shipping as well as any insurance of the goods, if desired by the Purchaser, shall be borne by the Purchaser. This includes all taxes and customs duties falling due as a result of the shipment.

3.2. The risk of accidental ruin or deterioration of the goods shall, even in the event of partial deliveries, be transferred to the Purchaser upon delivery, or, in the event of purchase for shipment, upon transfer to the shipper or other person responsible for transport. This shall apply even when shipment of the goods is not expressly requested by the Purchaser, as well as in the event that, as an exception, by separate agreement, the shipping costs are paid by ourselves. In the absence of express instructions from the Purchaser, we shall be responsible for selecting a suitable shipper.

3.3. The indicated delivery periods shall be deemed only approximate, unless expressly designated as binding in our order confirmation. All delivery periods shall be extended, in the event of labour dispute, particularly, strikes or legal lock-outs, in our establishment, or in that of any sub-supplier, as well as in the event of unforeseen circumstances (for example, force majeure, governmental measures, non-issuance of official permits, raw materials shortages, etc), above and beyond our control, by the length of the interruption of our commercial operations caused by the above mentioned impediment(s). The above mentioned circumstances shall furthermore be deemed above and beyond our control if occurring, for example, during an already existing delay.

3.4. Unless the delivery periods are expressly designated as binding, we shall not be deemed in default in delivery until after written demand by the Purchaser, which may be issued four weeks after expiration of the non-binding delivery period, at the earliest. Following receipt of notice to delivery, we shall enjoy an additional period of at least two weeks in which to make delivery.

3.5. We expressly reserve the right to make partial deliveries and to issue partial invoices, unless such partial delivery runs counter to the objective interests of the Purchaser, and such fact is communicated to us by the Purchaser.

3.6. Compliance with the delivery period shall be dependent upon fulfilment of all contractual obligations of the Purchaser (for example, provision of documentation, approval, discharge, making of agreed advance payments and/or settlement of payments already due and payable in relation to other transactions).

In the event of delay in shipment caused by circumstances attributable to the Purchaser, all risk shall be transferred to the Purchaser upon the date of readiness for shipment. At the Purchaser's request, and at the Purchaser's sole expense, we will, in such event, conclude an insurance policy.



4. Payment conditions

4.1. Unless otherwise established, compensation for goods, services, repairs and other accessory services shall be calculated according to cost, at the generally valid prices applicable upon conclusion of the contract. All prices are net, plus VAT at the legally applicable rate, in addition to freight, packing and shipping costs, ex works or ex warehouse. If shipment occurs following the delivery date originally agreed upon with the Purchaser for reasons attributable to the Purchaser, and if wage and materials costs, or sub-supplier prices, should increase in the meantime, we shall be entitled to increase our prices accordingly.

4.2. All invoices must be paid within two weeks following the date of invoice, i.e., payment must actually be received by ourselves within two weeks. All payments are to be made immediately to us, without deduction. Payments made to third parties shall only produce the effect of exoneration from tax when such third party is authorised in writing, by ourselves, to collect such payments.

4.3. In the event of late payment by the Purchaser, we shall, without prejudice to all other, more extensive rights enjoyed by ourselves, calculate interest at a rate of 8% above the applicable base rate of the European Central Bank.

4.4. All set-offs, and all execution of any right to withhold payment, based on any possible counter-claim of the Purchaser, disputed by ourselves, and not yet ready for decision or not yet legally binding, are excluded. Nor shall there be any right to execution of a right to withhold payment if the counter-claims of the Purchaser do not relate to the same contractual relationship.

5. Reservation of ownership

5.1. We reserve the ownership of the property pending payment in full of the purchase price, as well as all other claims due upon conclusion of the contract arising from the business relationship with the Purchaser, including all claims arising in the future, or arising from contracts concluded simultaneously or subsequently. The same shall apply when individual or other demands are included in a running invoice and the balance is calculated and acknowledged.

5.2. The Purchaser shall only be entitled to sell goods delivered under reservation of ownership in the ordinary course of business, after assigning to us all claims thereunto arising against his account debtor, or third parties, as a result of the sale, in the amount of the sum total of the final invoice, including VAT. Such assignment of claims will be accepted by ourselves.

All adaptation and processing of goods delivered under reservation of ownership shall be performed by ourselves as the Manufacturer, in accordance with the terms of § 950 of the German Civil Code. If the goods of various owners are inter-linked as a result of the processing, our ownership shall extend to a co-owner share corresponding to the proportional value of the goods delivered by us compared to the other goods being processed at the same time. The value of the goods shall be deemed equivalent to the agreed price.

5.3. The Purchaser shall remain entitled to collect his claim against the third party. We shall be entitled to revoke the authority to collect in the event of suspension of payments by the Purchaser, the filing of insolvency proceedings against the assets of the Purchaser, in the event of application for the opening of such proceedings, or if the Purchaser becomes insolvent in any other manner.



The Purchaser shall, in the event of revocation of the authority to collect, be obliged to notify us of all related debtors and claims assigned to us, providing all the information required for collection of the claims, as well as full documentation, and to serve notice upon the debtor of the assignment to ourselves.

5.4. The Purchaser shall make mention of our rights, and notify us immediately, in the event of any possible pledge by a third party. If the third party is unable to pay us the court costs and out-of-court legal costs of a complaint according to § 771 of the Code of Civil Procedure, the Purchaser shall be liable for all expenses incurred by us as a result.

5.5. We shall be entitled, in the event of violation of the contract by the Purchaser, in particular, in the event of late payment or violation of any of the above mentioned obligations, to cancel the contract and to reclaim all goods delivered under reservation of ownership. In such event, we shall be entitled to enter the premises of the Purchaser to repossess all goods delivered under reservation of ownership within the framework of enforcement of such reservation of ownership. All costs incurred by us as a result of repossession of the goods, as well as in defending our reservation of ownership or in collecting the assigned claims, shall be borne by the Purchaser.

5.6. If the Purchaser issues a cheque in connection with the payment of the purchase price, the reservation of ownership and, at the same time, the underlying claim, shall be extinguished only upon collection and/or credit, without reservation, of the cheque.

5.7. If the value of the existing sureties exceeds the claims to be guaranteed by more than 20%, we shall, upon Purchaser request, release Purchaser assets to the extent of the excess.

6. Material defects

6.1. The Purchaser shall immediately inspect all goods received for intactness, completeness and defects, and report any defects, in writing, within a period of one week of receipt of the goods; failure to do so will result in forfeiture of enforcement of any claims under warranty, and the goods shall be deemed approved, except for defects not apparent upon inspection. If any such defect appears at a later time, notice must be served without delay, within one week of discovery at the latest; in the event of failure to do so, the goods shall be deemed approved.

The Purchaser shall bear the burden of proof relating to all preconditions of the claim, in particular, the defect itself, the time of discovery of the defect, and the timeliness of the complaint based on said defect.

6.2. The warranty claim of the Purchaser shall, initially, be restricted to subsequent fulfilment. Following the second failure [on our part] to perform subsequent fulfilment, the Purchaser shall be free to have recourse to all other claims to fulfilment of warranty provided for by law.

We shall be entitled to elect whether to fulfil our obligation of subsequent fulfilment by either subsequent improvement or subsequent delivery, in the absence of particular, credible interests on the part of the Purchaser excluding one or the other of these two possible methods of subsequent improvement.



6.3. We shall be entitled to refuse to perform subsequent improvement in the event of failure by the Purchaser to pay a proportional share of the agreed compensation. Withholding of payment shall only be possible pro rata the ratio between the value of the goods delivered in perfect condition, and the actual value thereof, upon conclusion of the contract. This shall not apply if the goods delivered consist of a single uniform article, and if we elect to deliver an article in perfect condition within the framework of subsequent fulfilment.

6.4. All claims of the Purchaser based on expenses incurred for purposes of subsequent fulfilment, particularly, transport, shipping, labour and materials, shall be excluded, to the extent that such expenses are increased by subsequent delivery of the goods to a location other than the establishment of the Purchaser, unless such delivery reflects ordinary contractual custom.

6.5. There shall be no warranty claim for material defects if the articles delivered deviate only slightly from the contractually agreed properties and serviceability, unless the interests of the Purchaser are disproportionately prejudiced thereby. In the event of immaterial deviations, the Purchaser shall be required to accept the articles delivered.

6.6. Nor shall there be any [warranty] claim for [material] defects if said defects are caused by subsequent circumstances: excessive or improper use, ordinary wear and tear, failure of components in the system environment, non-reproducible software error, improper assembly and/or placement in operation by the Purchaser or third parties, unsuitable fuel, defective construction work, unsuitable building terrain or chemical, electrochemical or electrical influences, unless such factors are attributable to fault on our part. The exclusion of claims shall also apply in the event of subsequent change or maintenance by the Purchaser or a third party without our approval, unless said change or maintenance is without effect upon the analysis and elimination of the material defect.

6.7. All claims for material defects shall lapse within one year of commencement of the legal period of limitation. This shall be without effect upon the legal period of limitation for claims to reimbursement relating to purchasing contracts under § 478 of the German Civil Code. If the Law on Purchase Contracts, under § 438 paragraph 2 no. 2 of the German Civil Code, prescribes longer periods of limitation for structures and objects intended for use in structures, the latter periods of limitation shall apply. The same shall apply if the Law on Labour Contracts, under § 634 a paragraph 1 no. 2 of the German Civil Code prescribes longer periods of limitation for structures and planning and supervisory services, successful fulfilment of which consists of a service. The same shall apply in the event of deliberate or grossly negligent violation of an obligation, malicious concealment of a defect, as well as in the event of bodily injury, death or detriment to health caused by negligence on our part.

7. Defective title

7.1. We may only be held liable for violations of the rights of third parties if utilisation is made of our service in [strict] accordance with the contract and, in particular, the contractually intended scope of utilisation. We shall only be liable for violation of the rights of third parties within the European Union, as well as at the location of contractually intended utilisation of the service.



7.2. In the event of enforcement against the Purchaser of any claim for the violation of the rights of a third party, we must be informed of such fact without delay, to enable us to prepare a defence against the claim to be enforced.

7.3. In the event of the violation of any right of a third party by our services, we shall be entitled, at our election, to:

- secure an unimpeachable right to the use of said service by the Purchaser; or
- reorganise our services in such a way as to be unobjectionable; or
- take back the services performed by ourselves, if no other remedy is possible at reasonable cost, in which case the interests of the Purchaser shall be taken into account to a reasonable extent.

7.4. All claims for defective title shall lapse according to the terms of Clause 6.7.

8. Limitation of liability

8.1. We will be held liable:

- under the Product Liability Law;
- for prejudice arising from death, bodily injury, or harm to health for causes attributable to negligence on the part of ourselves, our legal representatives, or agents;
- for all prejudice caused by deliberate or grossly negligent conduct on the part of ourselves, our legal representatives, or agents.

8.2. In the event of slight negligence, we shall, in addition to the cases mentioned in Clause 8.1, only be liable for violation of major contractual obligations. Our liability in such case shall, in the event of property damage or pecuniary prejudice, be restricted to contractually typical, predictable prejudice.

We shall not be held liable for consequential damages for deliveries or for inability to delivery, except under the circumstances mentioned in Clause 8.1.

8.3. In the event of data loss, we shall be liable only to the extent of the expenditure incurred in the restoration of the data during proper data backup.

8.4. For the period of limitations, Clause 6.7 shall apply accordingly.

9. Purchaser insolvency /Cancellation of the order

9.1. In the event of Purchaser insolvency following conclusion of the contract, or application for the opening of insolvency proceedings against the assets of the Purchaser, or in the presence of circumstances, following conclusion of the contract, seriously prejudicing the credit rating of the



Purchaser, we shall be entitled to refuse to make delivery pending effective payment or the establishment of a surety for delivery. The same shall apply if the facts underlying the insolvency of the Purchaser only become known following conclusion of the contract, although existing prior to conclusion of the contract.

9.2. If the Purchaser fails to make payment within a reasonable period of time, and/or fails to establish a surety for his payment, we shall be entitled to cancel the contract and/or to demand compensation for damages. We shall furthermore be entitled to object to the sale and/or further processing of any goods delivered under reservation of ownership, and to demand the separate storage of all such goods, pending payment in full, by the Purchaser, for all goods on hand under reservation of ownership, or establishment by the Purchaser of a surety for the corresponding amount. If we elect to demand compensation, we shall, in addition to costs already incurred, be entitled to invoice a lump sum for damages, in the amount of 10 % of the value of the order, plus VAT. We reserve the right to produce proof of lesser or greater prejudice.

9.3. The arrangement mentioned in Clause 9.2 paragraphs 2 and 3 shall apply accordingly in the event of cancellation of an order by the Purchaser. All cancellations shall be in writing.

10. Service contracts

10.1. The performance of repair work, service and maintenance work, placement in operation, and other services expressly designated as service contracts (hereinafter referred to generally as "Service Contracts") shall be governed by the following supplementary provisions:

10.2. We assume no risk in relation to cost estimates issued by ourselves, unless the binding nature of such cost estimate is expressly agreed in writing. Non-binding cost estimates may be overrun by up to 10 %; any greater overrun shall require the approval of the client.

If, as an exception, any service contract is performed by ourselves in the absence of a cost estimate, we will issue an invoice for the services of our employees, according to time spent, as indicated in the current price list in each particular case. The cost of materials, travel and lodgings will be invoiced separately, in a proportional amount, with proof of expenditure.

10.3. Non-binding cost estimates shall be deemed valid for a period of three weeks following the issuance thereof. If an order is placed based on such non-binding cost estimate, any possible costs incurred in drawing up the cost estimate will be set off against the invoice relating to the order. If the order is not placed, we reserve the right to invoice the Purchaser for all costs incurred in this regard.

In calculating the prices, we shall assume that all necessary preparatory work has already been performed in full.

10.4. We shall do our utmost to fulfil all service contracts as quickly as possible. Finalisation dates shall only be binding when expressly designated as such. In the event that non-binding finalisation dates are overrun, we shall not be deemed in default without the establishment of a suitable extension of the delivery period by the Purchaser.



10.5. We shall be entitled to engage a sub-contractor for the fulfilment of service contracts.

10.6. In the event of justified complaint, we reserve the right to subsequent fulfilment. Subsequent fulfilment shall only be deemed to have failed when an existing defect has not yet been eliminated after the second attempt at subsequent fulfilment, after which time the Purchaser shall be free to have recourse to all other claims to fulfilment of warranty provided for by law.

10.7. Due to the claims arising in our favour from the terms of the service contract, we shall be entitled to a contractual right of lien upon all goods [owned by the Purchaser and] held by ourselves as the result of the service contract.

The contractual right of lien may be also be enforced against claims arising from work performed previously, as well as for deliveries and other services insofar as related to the object of the contract.

10.8. With regards to any other claims against the Purchaser arising from the business relationship, the right of lien shall apply only insofar as such claims are undisputed, if legal title is present, and if the object of the order is the property of the client.

10.9. The Purchaser shall be obliged to accept and inspect the serviced article immediately following acceptance.

Acceptance shall be deemed to have occurred if no recognisable defects are reported in writing within a period of one week following receipt of the serviced article following express notification during shipment/transfer.

10.10. All the provisions of the present General Terms and Conditions shall apply to the establishment of completion periods, payment conditions, service disturbances, transfer of risk, material defects, and, accordingly, to the duty of inspection and to service contracts, unless otherwise regulated under the express terms of Clauses 10.1 – 10.10.

11. Miscellaneous

11.1. The present contract is governed by German law, to the exclusion of all other regulations of German International Private Law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

11.2. If the Purchaser is a merchant, a legal person under Public Law, or a Public Fund Asset, the place of jurisdiction for all disputes arising out of the present contract, including punitive complaints, shall be our registered office or, at our election, the registered office of the Purchaser. The same shall apply if the Purchaser has no general jurisdiction in Germany, or if his residence or usual abode is unknown at the time of filing of the complaint.