

FRITZ WINTER EISENGIESSEREI GmbH & Co. KG (FW) General Conditions of Purchase

1. Validity of general FW conditions of purchase

(1) These conditions apply for all contracts concluded by FW acting as a buyer / purchaser or a leaser, accordingly, as far as no other arrangement has been agreed in writing, especially, even if not having been mentioned subject to contracts concluded at a later date. In these conditions the respective contracting party of FW is designated as a contractor (AN).

(2) Except possible simple rules of secret liens the general conditions of business of the AN deviating from these conditions such as contractual obligations, delivery terms or conditions of payment do not form an integral part of the contract, even if FW does not formally contradict hereto.

(3) With completion of contractual performance being achieved by the AN, obviously, these conditions of purchase are said to be approved, accordingly.

2. Conclusion of Contract and Contract Amendments

(1) The contract is concluded by written order or delivery schedule made by FW if the AN does not disagree in writing within one week after receipt of order or of the delivery schedule or if he will submit a counter offer. The timeliness is basing on the receipt of the disagreement at FW. It's content is binding as far as FW does not refuse the counter offer within two weeks after receipt, if those contents do not differ considerably from the order or the delivery schedule. Unless otherwise stated in the order or the delivery call-off, a change in the delivery date or the delivery period by more than forty-eight hours, a change in the delivery quantity by more than five per cent or any change in the price shall be deemed to be a substantial deviation. The decisive factor for the timeliness of the rejection of the counter-offer shall be its dispatch by FW; the postmark shall be deemed to be proof.

(2) As to grant their efficiency of an already concluded contract, obviously, any retroactive modifications and supplements require the written acknowledgement with regard to the effective aforementioned passage, respectively.

3. Extent and Content of Liability

(1) Extent of liability of AN is the outcome of the contract, respectively, according to the written order established by FW, the applicable guidelines performed by FW and accessible at FW and their delivery specifications possibly taken into account subject to the order.

(2) All deliveries must meet the respectively most recent technical level, especially the most actual DIN standards and the the other standards usual within industrial ranges or the European Union, as well. All regulations concerning any safety features and protection of labour must be strictly adhered. The AN takes care that the delivery item correctly mates the FW standards including appearance and designations. He must collect all informations subject to considering any prescriptions, and he is responsible for any damages arising from non-adherence of that obligation and, obviously, the AN releases FW from all claims generated from any third parties.

(3) The Contractor shall ensure - also with his subcontractors - that all internally and externally provided processes, products and services comply with the applicable legal and regulatory requirements of the exporting country, the importing country and the destination country designated by FW. If no country of destination is mentioned, the Federal Republic of Germany is considered the country of destination. If FW specifies specific surveillance measures for certain products subject to legal and regulatory requirements, AN will ensure that such monitoring is performed as required, continuously maintained and documented.

(4) FW is not responsible regarding the approval of parts not explicitly agreed or concerning any additional supplies. This also applies if deliveries are supplied at FW already before the agreed delivery date. Such pre-deliveries do not lead to any changes of contractual agreed due dates or set forth in § 6 subject to any payments. FW is authorized to return such deliveries at AN's risk and expense or to store them at any third's premises.

4. Deliveries

(1) All deliveries to FW must be free of charges, otherwise FW will deduct the calculated carriages from the AN's invoice.

(2) The goods to be delivered have to be packaged in a commercial and appropriate manner.

(3) Each delivery must contain a verifiable delivery note indicating first of all: order number of FW, supplier number and place of unloading.

(4) Furthermore, the FW order number has to be mentioned within the whole exchange of correspondence.

(5) Trucks can only be unloaded at the FW premises from Monday until Friday within 07.00 until 14.30 hrs. Any other unloading times have to fixed set in advance with FW. Trucks arriving at FW beyond that time cannot anticipate correct clearance. Insofar, all arising costs for any holding times etc. are not overtaken by FW.

(6) Until the handing over of respect delivery goods to FW or the receiver having been mentioned by FW or approval of delivered goods by FW, obviously, the AN bears both the risk of conveyance, degradation and the accidental destruction.

5. Invoices

Invoices are to be sent immediately after delivery or performance for each order separately exclusively to our invoice mailbox rechnungen@fritzwinter.de. They may neither be enclosed with the goods nor sent directly to the factory departments. Only one invoice may be sent per e-mail. Attachments to an invoice must either be sent together with the invoice in a single pdf file or the first pdf file in the e-mail must be the invoice, in which case other attachments to the invoice may be added to the mail as additional files. All invoices must contain the order number and the compulsory details according to § 14 of the Value Added Tax Act (UStG). Partial and final invoices must be explicitly marked as such. Invoices that are not in order and not verifiable shall be returned to the Contractor unprocessed.

6. Prices and Payment

(1) The prices mentioned in the order are binding. They are firm prices and are to be considered free ex FW works or that place of utilization indicated by FW, packaging included. Any orders without indication of prices are carried out subject to change.

(2) The payment is carried out after contractual receipt of goods and receipt of auditable invoice 14 days less 3 % discount or after 60 day, net. The method of payment is realized after FW's option.

(3) FW is entitled to balance any accounts receivables from the AN against all counter claims arisen on behalf of.

(4) Except any assignments in advance to suppliers within the extent of reservations of proprietary rights, of course, all assignments of bills outstanding of the AN against FW and the collection of such allowances by any third parties explicitly require the acceptance to be given by FW in advance.

7. Dates of Delivery and Terms of Performances

(1) Dates of delivery and terms of performances are binding and exactly have to be maintained. The respect of any dates and terms is basing on the receipt of goods at FW premises.

(2) Any delays arising, given the case, the AN is obliged to inform FW immediately in writing, accordingly. FW should than be satisfied of all claims upcoming therefrom.

8. Property Rights

(1) The AN assures that his performances and supplies, especially the production, the delivery, the start-up operation, the utilization, the assembly / installation or the resale of supplied goods or equipments, do not infringe the property rights or other intellectual property of third parties such as patents, trade marks and utility patterns.

(2) He explicitly commits himself to indemnify FW and his sub-supplier from possibly arising claims from any third parties and to replace on the behalf of FW any damage generated insofar. This is also valid in such case that FW has to indemnify the owner of property rights with the payment of license fees he would require.

(3) FW also reserves it's right to withdraw from the contract or to request the replacement of those parts which cannot be used due to the property right belonging to the said third party.

9. Work Rules

The AN and his factors and assignees entering the FW factory are under the control of the FW work rules available in the Internet: www.fritzwinter.de/download/arbeitsordnung.pdf. Against FW the AN and his assignees and factors commit themselves as to fully respect the work rules.

10. Liability

(1) FW is liable according to the legal rules in as far the AN claims for compensations arising from intent or gross negligence, including intent or gross negligence generated by assignees or factors named by FW. As far as FW cannot be made responsible for any intended breach of contract the liability for compensation of damage is only limited to the predictable and typically occurring damage.

(2) According to the legal regulations, FW is liable as far as FW culpably infringes a considerable contractual obligation; hereto, the liability for compensation is limited to the predictable and typically occurring damage.

(3) The liability due to culpable infringement of life and healthfulness remains unaffected.

11. Secrecy

Acting as his associate partner the AN commits himself as to treat strictly confidential all commercial and technical details relating to the contract concluded with FW and all features concerning its processing. He also commits his assignees and factors, respectively.

12. Documentation, Samples, Patterns, Drawings etc.

(1) Subject to all provided documents, samples, patterns, drawings, toolings etc FW reserves its rights of property and copy. Those rights are only to be used subject to fulfillment of concluded contract and after request or settlement of contract they have immediately to be transmitted to FW. Insofar a right of retention is excluded. The AN is not allowed to use, reproduce, submit or make accessible those items to any third parties for any other purpose – even on his own behalf.

(2) All finished goods generated according to documentations, samples, patterns, drawings, toolings or reproduced toolings etc. created by FW are neither allowed to be used by the AN nor to be offered or supplied to any third parties. Any documentations etc. which FW has submitted to the AN on loan have to be handled and stored carefully and must be insured on his charge against humidity, fire, burglary and housebreaking, accordingly.

13. Liability subject to Material Defects and Deficiencies in Title

(1) The AN is liable for the fulfillment of his obligations according to the legal regulations. Any warranty claims will become time-barred after 24 months during multiple-shift running if no longer limitation period exists according § 438 passage 1 and 3 BGB.

(2) The receipt of delivery goods is accepted under reserve of investigation, especially regarding defect-free condition and completeness. The investigation takes place according to delivery note and is limited to detection of apparent defects. FW will indicate to the AN in writing any deficiency of the supplied good as soon as such deficiency will be detected according to the circumstances of a correct operating / business procedure. Insofar, the AN disclaims the raise of an objection of the belated letter of complaint.

(3) In urgent cases of an imminent danger of breakdown or already incurred disruption or, if the AN does not immediately fulfill his belated commitment after request of FW, FW is authorized to correct themselves or by a third party any possible deficiencies at the expense of the AN.

14. Code of Conduct

The FW Code of Conduct (available in the internet www.fritzwinter.de/downloaddokumente.html) becomes valid with each order as a binding part of the contract between FW and the AN. The AN will to comply with the principles of the FW Code of Conduct and will correspondingly pass it to its own chain of suppliers. In doing so, the AN will explicitly fulfil its obligations under the German Supply Chain Obligations Act (Lieferkettensorgfaltspflichtengesetz - LkSG) for the protection of human rights and the environment in the supply chain and will actively promote compliance within its sphere of influence. Furthermore, the AN agrees that FW may request appropriate evidence of compliance with the Act, e.g. through self-assessment or on-site visits / audits by FW or an authorised third party.

15. Final Clauses

(1) The calculation of quantities and weights are entirely basing on the quantities and weights determined at FW. The quantities and weights agreed upon have to be strictly maintained.

(2) Any personnel related data received / obtained from the AN are exclusively treated and transmitted for business purposes by means of electronic data treatment according to the prescriptions of the Federal Data Protection Act.

(3) If the AN ceases his payments or if the insolvency proceedings are adjudged, obviously, FW is entitled to recede from the non-performed portion of the contract.

(4) The right of the Federal Republic of Germany is binding with regard to these conditions and the whole privities of contract between the AN and FW. The applications of the UN-law on sale/purchase of goods is excluded.

(5) Should one clause of those condition become or be inoperative, obviously, the efficiency of all the other regulations will remain unaffected. The parties commit themselves to meet a determination instead of that ineffective regulation as to approach economically as much as possible to the said effectless instruction.

(6) The place of deliveries is always the receiving plant i.e. the application site indicated by FW.

(7) The place of jurisdiction is the legal domicile of FW. FW reserves the right of commencement of action at every other acceptable place of jurisdiction.