

General Terms of Business for Purchase of Goods and Services by FUCHS Europoles GmbH

(Date of most recent changes: April of 2019)

1. General

1.1. These General Terms for Purchase of Goods and Services apply to all orders and legal relationships between FUCHS Europoles (hereafter „FEP“) and its Suppliers. In the event that any terms of business of our Suppliers exist that are in conflict with these present Terms of Business, or that are in conflict with legal stipulations, such terms of business of our Supplier are hereby expressly contradicted, unless FEP has agreed in writing on an individual basis to accept such conflicting terms of business of our Supplier. The terms of business of our Supplier also do not become part of the content of an agreement, even though FEP has accepted supplies or services in cognizance of such conflicting or supplementary terms of business.

1.2. Contractual relationships will furthermore be subject exclusively to German law. The Hague Convention dated 1 July 1964 with respect to uniform legislation on international purchase, and the United Nations Treaty dated 11 April 1980 on agreements concerning the international purchase and sale of movable goods, will not apply.

2. Scope of order and prices

2.1. FEP reserves the right to reduce or increase the scope of the order, as well as to request modifications in the mode of order execution, on the basis of new developments in the state of the engineering art, insofar as such developments represent an improvement for FEP. In the event that cost reductions thereby arise, these reductions will be subtracted from the value of the order. Before beginning execution of the modified services, the Supplier will inform FEP of such price changes before beginning execution of the changed services to be performed.

2.2. The prices given in the FEP order are maximum prices and will remain unchanged, even in the event of price increases that may in the interim take place. If, however, the Supplier reduces his prices before the date of delivery, the Supplier will reduce the price to be paid to a corresponding degree.

2.3. In the event of foreign Contractual Partners, such Contractual Partners will bear any costs involving customs, consulate fees, as well as any taxes, fees, rates, or duties arising from regulations valid outside the Federal Republic of Germany, as well as any expenses arising in conjunction therewith. In association herewith, the Supplier also agrees to observe the regulations of the Federal Republic of Germany with regard to packing and packaging, weighing, customs, and import procedures. Any additional costs arising from such regulations must be borne by the Supplier.

3. Deliveries and delivery dates

3.1. The delivery date as agreed will be understood as an arrival or completion date. If a valid delivery date has elapsed without delivery, the Supplier will automatically be considered to be in default, without the necessity of reminder.

3.2. If, in the case of delivery and/or manufacture of movable goods, the Supplier is in default of delivery, or if he is in default with the installation and commissioning of immovable goods such as permanently installed machines, complete machine and production facilities, or other equipment, the Supplier will pay liquidated damages of at least 0.2 % of the net contracted amount per calendar day of delay, but not more than a maximum limit of 5 % of the net contracted amount per case of delay. FEP, however, reserves the right to assertion of claims, as verified by relevant evidence, for greater damages resulting from delay, as well as for additional damages.

4. Consignment and assumption of risk

4.1. The Supplier assumes responsibility for exact observance of the consignment regulations to which FEP has instructed him to adhere.

4.2. FEP will be entitled to refuse to accept consignments if sufficient and correct consignment documents are not made available to FEP on the day of receipt of the shipment. FEP will enjoy this entitlement without subjecting itself to default in acceptance or takeover of goods or plant systems. The Supplier will bear the costs involved in justified refusal of acceptance of consignments.

4.3. Until turnover to or acceptance by FEP, the Contractual Partner will bear the risk of accidental loss or accidental damage. If the consignment of the Contractual partner is found to have recognizable shortcomings upon receipt by FEP, the stipulations as set forth here in 4.2. will apply accordingly.

4.4. All services will be understood to be provided on a carriage-paid basis to the delivery address as given, insofar as no agreement has been reached to the contrary on an individual basis.

4.5. Insofar as nothing to the contrary has been agreed, the Contractual Partner will bear the costs for transport packing. Return of the packing material by FEP will take place only if FEP has expressly declared its willingness to this action in writing, or if the return is binding by law. In such cases, the Contractual Partner will bear the risk of accidental damage, loss, or destruction of the packing.

4.6. Our Contractual Partner will be considered to have fulfilled his commitment to deliver only upon turnover or acceptance by FEP or through FEP of the service rendered at our plant, insofar as nothing to the contrary has been agreed in writing. Binding values for quantities and weights will be those values as measured at the respective plant of FEP, insofar as the Contractual Partner cannot provide evidence of other values.

4.7. In the event, at the plant locations to which delivery is to be made, of plant operational disturbances, restrictions on FEP plant operations, or other disturbances resulting from force majeure for which FEP is not responsible, or for which FEP is merely ordinarily or inadvertently negligent, FEP will for the period of such disturbances be released from the obligation to perform prompt acceptance of the ordered goods or services, as well as for payment for the same, without a claim arising on the part of the Contractual Partner for restitution of damages.

4.8. The stipulations in Paragraph 373 of the German Commercial Code (Handelsgesetzbuch, HGB) will not apply.

5. Construction contracts and contract orders

5.1. The Contractual Partner will be liable for the execution of all work, also including work subcontracted out by him, for assuring that environmental, accident-prevention, fire-prevention, and occupational health and safety regulations be observed, especially as they apply to FEP plant facilities. The Contractual Partner, his employees, as well as agents contracted by him, will ensure the careful and safe storage of his property stored in our plant facilities. FEP will be responsible for any loss of or damage to such property in accordance with Subparagraph 6.6. herein.

5.2. For construction contracts in the sense of Paragraphs 48 ff of the German Income Tax Law (EStG), FEP will be entitled to carry out the legally stipulated withholding in the event that FEP has doubt of the validity of a certificate of exemption (German Freistellungsbescheinigung). FEP will be entitled to obtain information from the tax authorities for this purpose. The Contractual Partner will indemnify FEP against any liability in conjunction herewith and with respect to the tax authorities.

6. Liability

6.1. The Contractual Partner will, in accordance with applicable law, be liable for all damages for which he or his subcontractors are responsible. He will indemnify FEP against any claims for damages by third parties, as well as against the consequences of instructions issued by regulatory government agencies, in all cases in which such claims are lodged in conjunction with damages caused by the Contractual Partner, or negligence occasioned by himself or his subcontractors.

6.2. The Contractual Partner will immediately notify FEP in the event that he or his subcontractors are responsible for any loss or damages.

6.3. The Contractual Partner agrees to conclude or provide evidence of an existing third-party liability insurance policy in accordance with the stipulations contained herein under Subparagraph 6.5., and to keep such insurance in force throughout the term of the contractual relationship and for a period of at least six months after termination of such relationship.

6.4. The third-party liability insurance policy will cover the liability of those persons whose services are employed by the Contractual Partner to conduct the relevant work, insofar as these persons may cause damages in the performance of their activities arising from the present agreement. Insofar as different amounts are not specified in the order, the minimum coverage of the third-party liability insurance policy will be as follows, per occurrence giving rise to damages:

- EUR 500,000 for personal injury and property damage, and

- EUR 50,000 for pecuniary losses, insofar as another amount is not stipulated in the order.

If requested, the Contractual Partner will, not later than ten days after conclusion of agreement, present evidence of the above-stated insurance coverage.

6.5. FEP can be held liable only in cases of intentional culpability or gross negligence on the part of FEP or its agents, or in case of breach of contractual obligations: i.e., of such obligations whose fulfillment are basically essential and on whose reliable observance the Contractual Partners may depend. In the case of non-fulfillment of essential contractual obligations that do not arise from pre-mediation or gross negligence, liability will be limited to typical and predictable damages. The above stipulations do not apply to harm suffered to life, limb, or health. Liability based on product-liability regulations and legislation is not affected by these present stipulations.

7. Statutory minimum wage

7.1. The Supplier guarantees the compliance with legal regulations concerning the statutory minimum wage for its permanent and temporary employees.

7.2. The Supplier agrees to demand and audit the compliance with the guarantee mentioned in No. 7.1. also of its subcontracting companies and temporary employment agencies.

7.3. The Supplier is liable for any damage to FEP that is caused by culpable non-fulfillment or insufficient fulfillment of these obligations. The Supplier explicitly keeps FEP indemnified against all liability hereof.

7.4. FEP reserves the right to demand proof of the compliance with aforementioned obligations by way of documentation or other appropriate means. The Supplier hereby explicitly and irrevocably grants FEP the authority to obtain information about the compliance with the legal regulations of the statutory minimum wage also directly from its subcontracting companies and temporary employment agencies, appointed to fulfil these obligations.

7.5. Any infringement of the abovementioned obligations entitles FEP to terminate the contract without notice for good reason.

8. Patents and proprietary rights

8.1. The Contractual Partner will ensure that the goods delivered by him do not infringe on patents or other commercial proprietary rights of third parties.

8.2. The Contractual Partner will grant FEP indemnity especially against any claims for damages that may arise from claims or from litigation owing to an infringement caused by the Contractual Partner of patents or any other commercial proprietary rights, and the Contractual Partner will undertake at his expense our legal defense. In the event that any claims be lodged against FEP, FEP will without delay inform the Contractual Partner in writing and will provide the Contractual Partner the required information at his expense.

9. Right of utilization

9.1. All material prepared for FEP in conjunction with execution of the contract by the Contracted Party – i.e., written documents, drawings, drafts, specifications, notes, programming materials, information carriers, or other documents – become our property at the point in time that they are created. Insofar as transfer of such material has not yet taken place, the Contractual Partner will store this material for FEP at no cost. At the same time, and insofar as legally allowed, the Contractual Partner will assign to FEP all rights enjoyed by him as a result of the execution of the agreement, as well as all rights to the results arising therefrom.

9.2. FEP will be entitled to utilize the object of the agreement without restriction, also after termination of the agreement. The Contractual Partner agrees that FEP may utilize the object of the agreement without copyright designation.

9.3. The Contractual Partner will without delay notify FEP completely in writing concerning any and all inventions or improvements (hereinafter referred to as “inventions”) that he or his employees may develop in the execution of an order awarded on the basis of this contract, or that he or his employees may have achieved for the first time in actual practice, regardless of whether these inventions are capable of being patented or not. For all these inventions, the Contractual Partner will in his notification especially emphasize those features that are in his opinion new or unique.

9.4. If so requested by FEP, the Contractual Partner will assign the invention to FEP. FEP will become the owners of the rights arising from such inventions, regardless of whether or not patent applications have been made for them.

9.5. The Contractual Partner will conclude the required agreements with his employees to ensure that the stipulations in this paragraph are observed.

10. Materials provided

10.1. Drawings, models, documents, tools, objects, and the like that FEP provides or purchases for the execution of a contract, remain the property of FEP, or will be transferred to the possession of FEP if tool, dies, or molds are required for special parts, they may be used only for our orders. This also applies to tools that the Contractual Partner manufactures for FEP for purchase by FEP. These tools likewise become the property of FEP. If these materials are not transferred to FEP, the Contractual Partner will store the materials for FEP at no cost.

10.2. After termination of the agreement, the above-stated materials provided must be returned to FEP, without the requirement that FEP expressly requests their return.

10.3. The Contractual Partner will be liable, in accordance with Paragraph 6., for the loss of, damage to, or misuse of the objects named in Subparagraph 10.1. above, up until orderly and complete return of these items. The Contractual Partner will be obligated to sufficiently ensure these items against damage and loss, and to provide to FEP evidence of this insurance, if so requested by FEP.

11. Transfer and offset

11.1. The Contractual Partner may transfer claims against us that are not monetary claims, to third parties only with our prior written consent.

11.2. The Contractual Partner will not be entitled to offset with respect to our claims, unless the matter involves counterclaims that are not contested by FEP, or that have been finally judged as non-appealable. The same will apply to the assertion of rights of retention.

12. Guarantee

12.1. The Contractual Partner guarantees that the goods and/or objects of the agreement correspond to the characteristics as contractually agreed and in accordance with relevant legislation; that the delivered goods and/or objects of the agreement comply with the contractually agreed quality and usability; that these goods and/or objects comply with relevant DIN regulations, and with the legal and official stipulations applicable to their operation and use; and that the delivered goods and/or objects of the agreement do not infringe upon the rights of third parties.

12.2. For movable objects, raw materials, and process materials, our FEP obligation to inspect received objects and to report deficiencies will begin only once the deliveries, the machines, or the like have been received in our plant, or after they have been installed and turned over in operational condition. The obligation of FEP to inspect the deliveries will be restricted to an inspection to determine whether delivered material coincides with the ordered goods, and to determination of apparent external damage to the goods. In case of apparent deficiencies, FEP must perform such inspection and lodge a complaint within one month. In the case of hidden shortcomings, complaint must be lodged within one month after their discovery.

12.3. In cases of immovable objects such as permanently installed machines and industrial facilities, official acceptance by FEP will be required. FEP will be obligated to officially accept such objects only once the machines and industrial facilities have been installed, properly set up, and rendered operational.

12.4. The guarantee term for deliveries of objects will be thirty-six (36) months, beginning with turnover or acceptance in a FEP plant. If, for the delivery of objects, modification of the plant or installation of facilities to accommodate the deliveries becomes necessary, the term of guarantee will be five (5) years.

13. Retention of title

13.1. FEP accepts retention of title by the Contractual Partner only in simple form. Ownership of the object of the agreement will pass to FEP upon our payment of the invoice, also in cases in which FEP has made justified deductions from the invoice payment in accordance with stipulations in the agreement. FEP expressly cannot accept any retention of title by the Contractual Partner to extended or expanded extent.

13.2. Material that FEP provides for execution of contracts remains FEP property. Immediately after acceptance of such material, the Contractual Partner will expressly mark this material as our property and will store it separately from similar or identical material. This material may be used only in connection with the planned production and may not be employed in any further manner.

13.3. If the Contractual Partner processes such material provided by FEP, or modifies it, or connects it with other objects, such processing, connection, or modification will take place for FEP. FEP will directly become owners of such material by virtue of its processing, modification, or connection. In the event that legal stipulations render such an arrangement impossible, FEP and the Contractual Partner agree that FEP will become owners of the new objects at each point in time of processing, modification, or connection. The Contractual Partner will keep the new objects safe for FEP with all the due diligence of a sound businessman, and will immediately mark them as our property. In the event of processing, modification, or connection with other objects not belonging to FEP, ownership of the newly created objects will devolve to FEP in the proportion that results from the ratio of the value of the processed, modified, or connected objects being retained, to the value of the newly created objects. In the event of mixture or connection in such a manner that the Contractual Partner's objects are considered in the sense of primary objects, then it will be considered as agreed that the Contractual Partner grants FEP pro-rata ownership.

13.4. The Contractual Partner agrees to notify FEP without delay if third parties attempt or announce their attempt to gain access to goods belonging to FEP – e.g., by garnishment or by any other form of restriction of our ownership.

13.5. The Contractual Partner agrees to perform any required maintenance and inspection work on the material provided by FEP, and to sufficiently ensure the objects turned over to him, and/or those later manufactured. Upon request, the Contractual Partner will provide evidence of such sufficient insurance.

14. Confidentiality

14.1. The Contractual Partner will treat as confidential all commercial and technical information and documents that are not of general knowledge and that become known to him through our business relationship, and will use such material exclusively to perform the contracted deliveries and services. The Contractual Partner will ensure that all of his subcontractors likewise observe this stipulation.

14.2. In the event of providing project references, or in publications, the Contractual Partner may name FEP or its brands of the ordering party only if FEP has provided prior consent.

15. Spare parts and delivery readiness

15.1. The Contractual Partner agrees to maintain spare parts for the period of usual technical utilization, but for at least a period of ten (10) years after the first delivery of the objects of the agreement, and to deliver such spare parts under reasonable conditions.

15.2. If the Contractual Partner, after lapse of the period stated in Subparagraph 15.1. above, ceases delivery of the spare parts, or if, during this period, ceases delivery of the object of delivery itself, he will grant FEP opportunity to make one last order.

16. Payments

16.1. FEP renders payment within thirty (30) days after receipt of invoices, including all documentation required to be provided (e.g., test records and certificates), with an early-payment trade discount of 3% to be deducted for payment within this period, or with a discount of 2% to be deducted for payment within 45 days, or with no discount (i.e., net payment) within 75 days, insofar as no terms of payment to the contrary are stipulated in the order.

16.2. In the event of notification of defects, FEP will be entitled to withhold an amount of three times the expected costs of reworking or of replacement delivery, as required to achieve completely flawless delivery or manufacture.

17. Data privacy

The Contractual Partner declares his revocable consent that any personally related data provided will be stored and processed in conformity with legal regulations, insofar as required for execution of the order. The same will apply to personally related data received by FEP.

18. Concluding stipulations

18.1. Place of performance is the registered offices of the FEP plant for which the delivery or services are intended.

18.2. Any disputes arising from or on the basis of the agreement, including disputes involving promissory notes, checks, or other documents, will be settled exclusively in the regular court of jurisdiction in Nuremberg, Germany, insofar as the Contractual Partner is a trader (Kaufmann) according to German law, or if the Contractual Partner can in attributable manner be assumed to be a trader (Kaufmann) in the sense of the German Commercial Code (HGB).