

# Terms and Conditions of Purchase

## I. General Provisions

1. The following conditions are decisive for all orders and purchase agreements with our corporate customers.

2. Insofar as we have not confirmed deviating agreements in writing, deliveries to us, work performance for us shall, as well as the provision of services by suppliers be carried out exclusively on the following conditions. General conditions of sale of the supplier will not be recognised. Neither failure to object nor acceptance or payment of the goods shall imply recognition of the conditions of the supplier.

## II. Quotation/Order, Prices, Payment

1. Only orders and agreements in writing or by telex shall be legally binding for us. The order must be accepted within a time-limit of 2 weeks and as placed by us.

2. Delivery shall be carried out on the basis of prices agreed beforehand. These prices are fixed prices and shall undergo no changes at all. Insofar as prices have not been stated or specified when placing the order, they shall be given to us before execution of order. These prices shall only become binding following our express written acceptance.

3. Delivery shall be DDP (Incoterms 2020) unless something else has been agreed in writing in an individual case. In particular the price shall include packaging and shipment. Additional claims of any kind shall be excluded. Return of the packaging shall be subject to a special agreement.

4. Unless agreed otherwise we shall, at our own option, make payment with 3 % discount within 14 days as from delivery and receipt of the invoice or net payment within 30 days as from delivery and receipt of the invoice. Making payment shall not mean that we dispense with notice of defects and warranty claims.

5. Our rights of set-off and lien cannot be restricted.

## III. Delivery Time, Delivery

1. Agreed delivery dates shall be binding.

2. Decisive for compliance with the delivery date is receipt by the receiving centre or point of use we stated of the full quantity of goods that must be free from defects.

3. Shipment using the shipping route we specified shall be at the expense and the risk of the supplier. One copy each of the delivery notes and /or shipping advices quoting the order numbers and referring to the exact contents shall accompany the consignment or be forwarded to us immediately by post.

4. Damages to the goods caused by faulty packaging shall be at the expense of the supplier. The take-back obligation of the supplier for the packaging shall comply with the legal regulations. In the event that special charging of the packaging is agreed with the supplier, this must be credited at full value when returned carriage paid.

5. Receipt of the goods shall not imply acceptance as performance. The goods shall only then be regarded as accepted as performance at the time of receipt if we do not reject the goods within 10 working days after receipt.

6. Delivery more than two weeks before the agreed delivery date shall only be permissible following prior written agreement. In the event of delivery ahead of time without our approval, the goods shall be stored on our premises at the expense and at the risk of the supplier; periods allowed for payment shall only commence as from the agreed delivery date. We shall only accept partial deliveries following express agreement.

7. Short deliveries or over-deliveries shall only be permissible in the case of standard goods, but are subject to our approval if they exceed 10 %.

## IV. Default, Force Majeure

1. The supplier shall notify us of delays immediately after they become known, stating reasons and the estimated duration of the delay. Notification must also be made of any costly special measures for compliance with the requested delivery dates, which are always at the expense of the supplier. In the event of a delay in

delivery, we are entitled to demand lump-sum damage caused by the delay in the amount of 1% of the delayed delivery value per week started, but not more than 10% of the delayed delivery value; further legal claims remain reserved.

2. Government measures, riots, strikes, lock-outs, fire, machine malfunctions, shortages in material or power supply, transport obstructions and other reasons we are not able to control that delay normal acceptance, shall be regarded as force majeure and entitle us to postpone acceptance accordingly; we shall be obligated to inform the supplier immediately of such circumstances when we are aware of them. If deferred provision of service is unreasonable for a party on account of the aforementioned events, this party shall be entitled to withdraw from the agreement.

## V. Quality Assurance, Quality Control, Liability for Defects

1. The supplier must maintain a quality management system to assure the quality of his deliveries and must be certified accordingly. Only such parts shall be delivered to us that have passed through and have been checked by the aforementioned quality assurance system prior to this and whose dimensions, quality and excellence have been determined in accordance with our specifications. All examination documents shall be kept by the supplier in accordance with the legal regulations.

2. The supplier shall warrant that the delivery is free from defects, complies with durability and quality guarantees and that the delivery is in accordance with the intended purpose, the latest best available technology and the relevant regulations of the authorities and professional associations and does not violate the rights of third parties.

3. If the goods are not flawless, we shall be able at our own option to demand subsequent delivery or subsequent improvement according to the legal regulations. In the event that a set, reasonable time-limit expires without being successful, we shall be able to withdraw from the agreement or demand diminution. By way of exception, a deadline shall be dispensable under the legal requirements. Our additional right to demand compensation on account of non-compliance with guarantees or culpable infringement of duties under a contract shall remain unaffected. In urgent cases and after unsuccessful expiry of a reasonable time-limit as set for subsequent delivery or subsequent improvement and prior information to the supplier, we shall be able to take the action needed ourselves at the expense and at the risk of the supplier and without prejudice to the warranty obligation of the supplier. The period of limitation shall begin again for parts that are delivered again or repaired by the supplier by way of subsequent delivery.

4. All costs arising from compliance with the duty to accept liability for defects, e.g. for dismantling, installation, freight, packaging, insurances, customs duties and other public dues, examinations including costs of experts and technical acceptance, shall be borne by the supplier. This shall also apply if additional costs come about due to the fact that the item is no longer at the original place of fulfilment.

5. The place of delivery and examination as defined by Article 377 HGB (Commercial Code) shall be the place of destination as stated by us. Notice of defects received by the supplier within a time-limit of two weeks after arrival at the place of destination shall be regarded as being in good time. In the case of hidden defects the time-limit shall be two weeks as from discovery.

6. On account of quality assurance and quality control by the supplier, our obligation to examine in accordance with Articles 377 HGB (Commercial Code) shall be restricted to examination whether the delivered products correspond to the ordered quantity and the ordered type and whether there is any externally visible transport damage or whether there are externally recognisable defects.

7. In the event that after delivery of the goods the supplier determines that the actual quality of the products deviates from the target quality, he shall immediately inform us about this and about planned remedial action.

8. The limitation period of claims for defects shall amount to 36 months as from transfer of risk. This shall not apply if a longer time-limit results from the law.

9. The supplier shall indemnify us from all claims that third parties – irrespective of legal basis – raise against us on account of a defect as to quality or defect of title or another defect in one of the products delivered by the supplier and shall reimburse us for the necessary costs of asserting our legal rights in this respect.

10. In the event of damages that occurred where the possibility exists that this damage is to be attributed to the delivered goods, the supplier shall be obligated to allow us and our employees, third parties sworn to secrecy and/or authorities to inspect all documents related to the product and the process, insofar as this inspection is suitable to make appraisals on the cause of the damage and on further risks coming from the goods. In addition, in cases of this kind the supplier shall commit to grant the aforementioned group of people unrestricted access to the production facility during normal working hours and with prior notice.

#### **VI. General Liability, Product Liability, Social standards, REACH**

1. The liability of the supplier shall comply with the legal provisions. The following shall apply in addition: if a claim is made on us on account of the breach of official safety regulations or on account of domestic or foreign product liability provisions due to defectiveness of the product, the cause of which is the delivery by the supplier, the supplier shall be obligated to compensate us for the damage arising from this, unless he does not bear responsibility.

2. Within the framework of his liability for cases of damage as defined in number 1. the supplier shall also be obligated to compensate for any expenses in accordance with Articles 683 and 670 BGB (German Civil Code) as well as in accordance with Articles 830, 840 and 462 BGB (German Civil Code) that arise due to or in connection with a product recall we carried out. If possible and reasonable, we shall inform the supplier of the content and extent of the recall measures to be carried out and give him the opportunity to comment. Other legal claims shall remain unaffected.

3. Insofar as product defects are to be attributed to deliveries or services by upstream suppliers or sub-contractors of the supplier, they shall be regarded as defects in the product of the supplier.

4. The supplier shall be liable for the environmental safety of the supplied products and packing materials. He shall be liable for all subsequent damage that comes about due to a breach of his legal disposal obligations, unless he does not bear responsibility.

5. The supplier commits himself and his sub-suppliers to implement the requirements of the social standards of the Fortdress Group. In addition, the supplier guarantees that it will not deliver any products that contain substances in a concentration that is prohibited by law or standard or is generally considered to be harmful to health. In the event of a violation of the provisions of this clause, the supplier must pay reasonable damages upon first request. Should claims by third parties against us arise as a result, the supplier shall indemnify us comprehensively.

6. The supplier also guarantees compliance with all requirements of Regulation (EC) No. 1907/2006 (REACH) and will pay us damages upon first request, indemnify us from all third-party claims due to non-compliance with REACH and reimburse any recall costs, whereby it is irrelevant whether the recall was ordered by the authorities or is based on our own decision.

7. Any other or adjacent claims shall remain unaffected by the regulations in this number of the agreement.

8. At our request the supplier shall issue a certificate of inspection for the supplied goods.

#### **VII. Industrial Property Rights**

1. The supplier shall be responsible for rights of third parties within the Federal Republic of Germany not being infringed in connection with his delivery.

2. In the event that a third party makes a claim on us on these grounds, the supplier shall be obligated to indemnify us from these claims at first written request; we shall not be entitled to reach any agreements with the third party, in particular to negotiate a settlement, without the consent of the supplier.

3. The supplier's duty of indemnity refers to all expenditures that necessarily arise for us from or in connection with the claim by a third party.

4. The provisions of numbers 1. to 3. above shall not apply insofar as the supplier produced the delivery items according to drawings, models or other descriptions or specifications that bear comparison that we handed over and does not know or in

connection with the products he developed does not need to know that industrial property rights are thereby breached. In this respect we shall indemnify the supplier from all claims by third parties.

5. The period of limitation shall amount to ten years as from conclusion of contract.

#### **VIII. Reservation of Proprietary Rights, Provision, Confidentiality**

1. All models, samples, drawings, standard specification sheets and other parts entrusted to the supplier for the execution of the order shall remain our property and must be sent back without being prompted to do so in perfect condition after completion of the enquiry or the order. Processing or alteration by the supplier shall be carried out on our behalf. If our goods subject to reservation of title are processed with other items that do not belong to us, we shall acquire co-ownership of the new item in the ratio of the value of our item (purchase price plus VAT) to the other processed items at the time of processing.

2. If the item we provided is mixed inextricably with other items that do not belong to us, we shall acquire co-ownership of the new item in the ratio of the value of the item subject to reservation of title (purchase price plus VAT) to the other mixed items at the time of mixing. If mixing is carried out in such a way that the item of the supplier is to be regarded as the main item, it is considered to be agreed that the supplier will transfer proportionate co-ownership to us; the supplier shall safeguard sole ownership or co-ownership on our behalf.

3. Insofar as the liens to which we are entitled in accordance with VIII numbers 1. and/or 2. exceed the purchase price by more than 10 % of all our unpaid goods subject to reservation of title, we shall, upon demand by the supplier, be obligated to release the liens at our own option.

4. The warranty and guarantee obligations of the supplier with regard to the delivery item shall not be affected by our consent to drawings, calculations and other technical documents. This shall also apply to proposals and recommendations that we submit.

5. The supplier shall be obligated to keep all illustrations, drawings, calculations and other documents and information absolutely secret. Furthermore, he shall assure that he will only use these documents for processing our order and will not use them in further projects. The supplier shall take all reasonable and necessary action in order to prevent third parties gaining knowledge of them and being able to exploit them. He shall undertake to assert at least the same degree of care for confidentiality of the communicated information that he would also assert for the confidentiality of his own confidential information. Insofar as they are not already bound by contract on account of their employment agreement, employees and clerical workers shall be obligated separately to observe confidentiality during and beyond the term of their employment relationship. Moreover, the supplier shall undertake to only make classified information accessible to third parties with our express, prior approval.

6. The supplier shall undertake not to duplicate any documents he received from us for our term of cooperation and to return them in full, including any copies made, without being asked to do so after termination of cooperation. Any data that may have been compiled and all copies shall be deleted from all data storage media or destroyed. This shall not apply if legal obligations prescribe storage.

7. The obligation to observe confidentiality is not aimed at knowledge that is generally available. Moreover, it does not include technical and commercial knowledge of the supplier as from the point in time it was publicised without a breach of contract on the part of the supplier having been the cause of this. Furthermore, it shall not apply to developments that are already evident and hence no longer secret.

8. This obligation to observe confidentiality is further applicable if the planned contract does not come about or has been completed. The supplier shall bear the burden of proof for generally available knowledge and notoriousness. Furthermore he must prove that the technical and commercial knowledge became generally available and that he was not the cause of this.

9. The supplier shall pay a contractual penalty, to be determined at our equitable discretion, for every case of a culpable breach of the obligation to observe

confidentiality according to numbers VIII 7-9. Within the limits of exercising discretionary power, special consideration shall be given to the significance of the breached obligation, our incurred and potentially possible disadvantage and the degree of blame on the part of the supplier. The discretionary decision is entirely verifiable by a court of law. The assertion of a further claim to compensation for damages, against which, however, the contractual penalty will be offset, shall remain unaffected.

#### **IX. Place of Performance, Place of Jurisdiction, Applicable Law**

1. The place of performance for all obligations arising from this contract is the registered office of Fortdress.

2. The exclusive place of jurisdiction for disputes with merchants, legal persons under public law or special legal funds and persons who do not have a general place of jurisdiction in Germany is the registered office of Fortdress. At our option we shall also be able to bring an action against the supplier at the court having jurisdiction for his registered office or at the arbitration court of the Deutsche Institution für Schiedsgerichtsbarkeit (DIS e.V.) [German Institution of Arbitration – DIS e.V.] / place of arbitration Cologne. If this takes place, the arbitration court shall have exclusive jurisdiction. German shall be the language of the case.

3. The law of the Federal Republic of Germany shall apply exclusively to the contractual relationship, excluding the conflict of laws. The application of the United Nations Convention of April 11, 1980 on Contracts for the Sale of Goods (CISG - "Vienna Sales Convention") is excluded.

4. Should a provision of these purchasing conditions and the other agreements made between the contracting parties be or become invalid, the validity of the remaining contractual provisions shall not be affected thereby.