

General Terms and Conditions of Supply of Friedrich Göhringer Elektrotechnik GmbH

Notice:

According to Section 19 par. 3 of these General Terms and Conditions of Supply, the contracts that are subject to these terms shall be governed by German law. If the English legal meaning of a term used in this English version of the General Terms and Conditions of Supply differs from the German legal meaning of the respective term, the German meaning shall prevail.

§ 1 Scope

- All – including future – supplies and services (hereinafter collectively referred to as „Supplies“) of Friedrich Göhringer Elektrotechnik GmbH („FTG“) to customers as defined in par. 2 are exclusively subject to these General Terms and Conditions of Supply as amended on the contract date and any other agreements that may have been concluded.
- The General Terms and Conditions of Supply only apply to business persons within the meaning of § 14 of the German Civil Code (BGB) or legal entities or special funds under German public law (öffentlich-rechtliches Sondervermögen) („Customer(s“).
- Customer's terms and conditions shall not apply, including in cases where FTG does not object to the applicability of such terms and conditions.

§ 2 Conclusion of Contract

- Offers submitted by FTG are not binding.
- FTG may accept Customer's orders within two (2) weeks from the order date, unless stated otherwise in the order.
- Agreements between FTG and its Customers are deemed to have been concluded if and when FTG accepts an order by way of a written declaration or by way of FTG's supply of ordered products or the provision of ordered services.

§ 3 Supplies; Reservation of Modification

- Illustrations or drawings provided by FTG or information provided by FTG on measurements, weight, mechanical engineering, colour, quality, design, workmanship and similar information are only approximate data, unless they are expressly referred to as binding.
- Descriptions of products and/or services given by FTG are not intended to be guarantees in a legal sense. Guarantees shall only be binding on FTG, if given in writing and expressly referred to as "guarantee".
- Upon the conclusion of a contract, FTG still has the right to modify or deviate from the promised supplies or services, if and to the extent that the modification or deviation is a normal business practice or is of minor significance and does not affect a quality guaranteed by FTG. In particular, this shall apply to changes and/or deviations regarding measurements, weight, mechanical engineering, colour, quality, design, workmanship and quantity.

§ 4 Tools

- Unless the parties have agreed otherwise, FTG shall manufacture or procure the necessary tools on its own.
- The tools remain the property of FTG. Customer may not claim the transfer, return and use of such tools. Unless the parties agree otherwise, the same shall apply, if the compensation payable by Customer also covers a certain portion of tooling costs.
- Any costs and expenses incurred in connection with the manufacture or procurement of tools are paid and settled by the compensation.

§ 5 Customer's Change Requests

- Customer may state its change requests regarding the Supplies to be provided at any time following the conclusion of a contract. Any deviation from the Supplies to be provided under a contract concluded by and between the parties is considered a change request.
- FTG will comply with change requests, provided that the parties have entered into a separate change request agreement. The change request agreement will govern the modified Supply, the changed compensation, if applicable, and the changed performance period(s).

§ 6 Prices and Terms of Payment

- Prices are indicated by FTG ex works (EXW Incoterms® 2010) and in Euro. Costs for packaging, shipment, insurance and customs duties, if applicable, and the then valid value added tax will be charged separately.
- FTG shall charge metal surcharges ("Metallzuschläge") separately. These surcharges will be based on the weight of metal used for the respective shipment. The computation will be based on the corresponding daily Mf rate on the date the order is received, provided, however, that the amount thus computed shall be reduced by EUR 153.39 per one-hundred kilograms of the weight of metal used. The computed amount will be increased by 1% of this amount as a service charge.
- In the event of delivery terms of more than two (2) months, FTG may reasonably increase the agreed prices at its own discretion, provided that labor, material, energy and/or raw material costs significantly increased following the contract date for reasons that are not attributable to FTG. The increase requires written notification from FTG. In the event of a price increase of more than five (5) percent, Customer has the right to cancel the agreement by written notification within two (2) weeks from receipt of the notice of the price increase.
- The compensation is payable upon the conclusion of the contract. Subject to the statutory provisions, Customer will be automatically in default with its payment, i.e., no reminder is required, if it fails to pay within fourteen (14) days from receipt of the invoice, unless the parties have agreed otherwise. Customer shall not deduct any cash discounts, unless expressly provided. Unless agreed otherwise, in the event that the parties agree on a cash discount, this shall not apply to metal surcharges and packaging, shipping and insurance charges, and, if applicable, other delivery costs.
- FTG may claim a reasonable advance payment if Customer's place of business is abroad and if there is a justifiable reason to doubt the creditworthiness of Customer. In the event of a justifiable claim to advance payment, FTG has the right to start performing the order of a purchase order after payment has been received.
- Customer is in default with its payments or if FTG, following the contract conclusion, becomes aware of facts that justify doubts as to the creditworthiness of Customer, FTG may demand prompt payment of all outstanding amounts and make further shipments or services contingent on an advance payment. This does not affect any other claims that FTG may have based on late payment.

§ 7 Right to Offset and Withhold Supplies and/or Services

- FTG has the statutory right to offset claims and withhold Supplies and/or services, and reserves the defense of failure to perform the contract. Notwithstanding § 273 of the German Civil Code, FTG may also withhold Supplies due, if it has a mature counter-claim that is not based on the same legal relationship as its duty to perform.
- Client may only offset claims against uncontested claims or claims finally adjudicated by a court. Customer may only withhold payments or supplies/services (e.g., contributed material, etc.), if its mature counter-claims are undisputed or were finally adjudicated by a court.

§ 8 Delivery, Risk of Loss, Partial Deliveries

- Delivery will be made by FTG ex works (EXW Incoterms® 2010) by providing the goods for collection at the FTG facilities in 78098 Triberg, Germany, or at any other agreed place and notice of readiness for shipment.
- The risk of loss or damage to the goods passes to Customer as defined in par. 1 upon delivery in accordance with EXW Incoterms® 2010, including in cases where FTG has assumed further obligations beyond the provision for collection (e.g., loading or transport) or bears the related cost.
- FTG may make partial shipments and/or render partial services, provided, however, that this does not significantly interfere with the interest of Customer.

§ 9 Delivery and Performance Term, Default, Storage Charges

- The agreed delivery and performance terms are approximate periods or dates.
- Delivery and performance periods start upon receipt of the order confirmation of FTG by Customer, however, no earlier than (a) clarification of all order details that require clarification from the perspective of FTG (in particular, technical specifications), (b) receipt of all records, documents, contributions, approvals, releases, approval of plans and, if applicable, any other necessary cooperation by Customer and (c) receipt of agreed or legitimately claimed advance payments to FTG.
- Compliance with such periods and dates shall be determined by the date the risk of loss passes (cf. § 8 par. 2).
- Compliance with delivery and/or performance periods is subject to timely delivery to FTG by its supplier that is free from defects, unless FTG is responsible for non-performance or defective goods or services supplied by its supplier. In the event of a mal- or non-performance of its supplier that is not attributable to FTG, FTG will not be in default and may cancel its performance obligation by giving a written declaration.
- If FTG is, with no fault on its part, unable to perform in time due to force majeure, e.g., mobilization, war, riot, terrorist activities, act of God or other unforeseeable circumstances for which it is not responsible such as strike or lock-out, the delivery periods will be extended by the period during which the event lasts, plus a reasonable period for resuming contract performance following the end of the incident of force majeure. Sentence 1 shall apply accordingly, if such circumstances arise at a supplier of FTG. If the impediment is not temporary, FTG may give a written declaration and cancel its performance obligation. In this case, the parties will not have any mutual claims out of or in connection with the contract. With regard to all other issues, the statutory provisions shall apply.
- In addition, delivery periods and/or the time for performance shall be extended by such period during which Customer fails to comply with its obligation to contribute to the proper performance of the agreement or cooperates only inadequately, plus a reasonable period to resume performance after Customer has cooperated with FTG.
- If FTG is in default due to ordinary or slight negligence, its liability for damage incurred due to the delay is limited to the typical and foreseeable damage, provided, however, that FTG is only liable up to 0.5 percent of the net invoice amount for the part of the delivery affected by the delay for each full week of default, up to a total of five (5) percent of this net invoice amount. In all other regards, § 16 shall govern the liability of FTG for default.
- If Customer wishes that the delivery or performance is to be made at a later date than agreed or if a delay in acceptance on the part of Customer results in a delayed shipment, FTG has the right to claim storage charges in the amount of 1% of the net price of the affected shipment for each partial month, starting from the notice of readiness for shipment, however, up to a maximum of 5% of this price. FTG may provide evidence that greater damages were suffered, and Customer may provide evidence that no damage or a significantly lower amount of damages was suffered. FTG may also store the deliverables with a freight forwarding business and claim reimbursement from Customer for costs incurred. The risk of loss in accordance with § 8 par. 2 remains unaffected by a later shipment at the request of Customer or due to Customer's failure to accept the goods.

§ 10 Packaging

- FTG shall pack the deliverables at its own discretion, as is customary in the trade, and at Customer's expense.
- FTG shall take back packaging material at Customer's request at its facilities (cf. § 8 par. 1). In this case, Customer shall return the packaging material in a clean state, free from contaminants and sorted by packaging types. Customer shall bear the costs of return shipment and proper disposal.

§ 11 Reservation of Title

- FTG reserves the ownership rights and title in the supplied goods and services (hereinafter referred to as "goods supplied under reservation of title") until all claims arising from the business relationship with Customer (including, e.g., collateral claims, claims for damages, and check and bill of exchange charges) have been settled. The reservation of title shall continue to apply if individual claims of FTG are transferred into a current account arrangement and if a balance is struck. The reservation of title applies to the actual as well as to the recognized balance.

- Customer agrees to perform any processing and/or modifications of the deliverables on behalf of FTG as the manufacturer within the meaning of § 950 of the German Civil Code. If the goods supplied under reservation of title are processed, combined with, or inseparably mixed with other items not belonging to FTG, FTG acquires a prorated joint ownership title in such new item based on the ratio of the value of the goods supplied under reservation of title to the value of the goods of Customer or any third party not belonging to FTG. In the event that Customer becomes by virtue of law the sole owner of the new compound item created using the goods supplied under reservation of title, Customer grants FTG a prorata joint ownership right based on the ratio set forth in sentence 2 as security for the claims indicated in par. 1 and shall store the item for FTG free of charge. In addition, the provisions regarding the goods supplied under reservation of title shall apply accordingly to the new item created through the processing, combination, or mixing.
- Customer may sell or dispose of the goods supplied under reservation of title only in the ordinary course of business operations, provided, however, that Customer shall not pledge the goods supplied under reservation of title without the prior written consent of FTG or assign them as security. In the event of a seizure of the goods supplied under reservation of title by third parties or in the event of a forfeiture, attachment, garnishment or any other third party orders or interventions, Customer shall promptly notify FTG.
- At the contract date, but no later than upon receipt of the deliverable, Customer assigns to FTG as security all claims it may have against its purchasers from the reselling of the goods supplied under reservation of title. FTG authorizes Customer to collect claims that have been assigned to FTG. Notwithstanding this authorization, FTG reserves the right to collect the claims. If Customer is in default with its payments, if it suspends its payments, if insolvency proceedings are instituted against the assets of Customer or if a similar circumstance arises, FTG may revoke the authorization to collect upon claims. If authorization is revoked, Customer shall, upon request by FTG, provide FTG with an information required for the assertion of the assigned claim, surrender any documents that may serve as evidence of the claim, and disclose the assignment. In this case, FTG may also disclose the assignment.
- In the event of delayed payment on the part of Customer, FTG may claim the return of the goods supplied under reservation of title if FTG rescinds the individual contract underlying the shipment that involves the claim to return the goods. In this event, Customer will assign to FTG any claims it may have against third parties regarding the return of the goods supplied under reservation of title.
- Upon request of Customer, FTG shall release securities to the extent that the realizable value of the securities existing for the benefit of FTG exceeds the claims to be secured by more than 100%.

§ 12 Intellectual Property and Rights to Use

- Any delivery made by FTG does not imply a grant of rights to use in copyrights, industrial property rights or other intellectual property that may exist in the deliverables, product descriptions, drawings, photos, etc.
- In the event that the parties agree on a grant of rights to use by FTG in the rights defined in par. 1, FTG will grant, unless provided otherwise, only non-exclusive, non-transferable and non-sub-licensable rights that are restricted to the purpose intended by the rights of use granted.
- In the event that Customer commissions FTG with the provision of Supplies in accordance with certain technical drawings, drafts or other specifications, it will grant FTG at the time of commissioning all rights required for meeting the requirements in and to any copyrights, industrial property rights and other intellectual property that may exist in connection here-with. FTG has the right to grant sub-licenses to vicarious agents and suppliers to the extent required.

§ 13 Receipt, Inspection and Notice of Defect

- Customer shall not refuse the receipt of Supplies and services due to insignificant defects.
- If Customer is a business person, it shall inspect the supplied goods immediately in accordance with § 377 of the German Commercial Code.
- It shall notify FTG of any defects as to quality that are recognizable promptly upon inspection and of hidden defects as to quality promptly upon their discovery.
- Any notice pursuant to par. 3 shall be given in writing and contain, to the extent possible, a detailed description of the defects as to quality.
- Customer does not have the right to raise claims based on defects as to quality of which it failed to notify FTG in accordance with the requirements as to form and time of such notification.

§ 14 Defects as to Quality

- In the event of defects as to quality, FTG will be liable in accordance with the statutory provisions, unless provided otherwise below.
- FTG shall discharge its warranty obligations by subsequent performance, at its option, either by the removal of the defect(s) as to quality or by supplying a replacement that is free from defects.
- Customer's claims related to the expenses incurred in connection with subsequent performance, in particular, transportation, travel, labor, and material costs, are excluded, to the extent that the expenses increase due to the fact that the deliverable has been relocated to a place outside Customer's site, unless this relocation is consistent with its contractual use.
- If the subsequent performance fails, Customer may, at its option, claim a reduction in the purchase price or – in the event of a material defect as to quality – rescind the agreement. Customer may claim damages for defects as to quality only subject to the statutory provisions and only to the extent that there is a liability claim in accordance with § 15. Any other remedies for defects as to quality are excluded.
- Recourse claims of Customer against FTG in accordance with § 478 of the German Civil Code shall only exist to the extent that Customer has not arranged with its purchaser for any provisions exceeding the statutory claims in case of defect. Paragraph 3 applies accordingly to the scope of the right to recourse of Customer against FTG in accordance with § 478 par. 2 of the German Commercial Code.

- Claims based on defects as to quality come under the Statute of Limitations upon the expiration of twelve (12) months from the passing of the risk of loss (cf. § 8 par. 2), unless FTG maliciously concealed or intentionally or grossly negligently caused defects as to quality or if FTG is liable under a guarantee or for bodily harm, personal injury or damage to health due to a defect.

§ 15 Defects in Title

- FTG will be liable for defects in title in accordance with the statutory provisions, unless provided otherwise below.
- FTG is not liable for defects in title that are due to the fact that FTG complied with technical drawings, drafts or other information provided to it by Customer. In the event that such drawings, drafts or information should infringe on third party rights, Customer shall hold FTG harmless and indemnify FTG for any claims that third parties may assert against FTG.
- FTG will be liable for the use of the deliverables without any defect in title outside the territory of Germany only in the event that the parties had agreed on such use or that it was to be expected in light of the circumstances of the conclusion of the contract. In the event of a potential liability for the freedom from defects in title outside the territory of Germany, FTG will only be liable for the fact that at the contract date no rights existed abroad that conflict with the intended use that were known to FTG or about which FTG could have known in the absence of gross negligence.
- In all other regards, the provisions regarding liability for defects as to quality set forth in § 14 par. 2 to par. 6 apply accordingly to defects in title.

§ 16 Liability

- Irrespective of the legal reason, FTG will be liable for intentional wrong-doing or gross negligence, personal injury, bodily harm or health damage, pursuant to the product liability law and for guarantees under statutory provisions.
- In other cases FTG is only liable for a violation of a contractual duty which has to be met to allow the proper performance of the contract and that customer may generally rely on to be complied with (so-called car-dinal duty), limited to compensation for foreseeable and typical damages – unless provided for otherwise in § 9 par. 7 for damages based on default. In all other cases, liability on the part of FTG is excluded.
- Claims to damages against FTG pursuant to § 9 par. 7 and par. 2 of this § 16 will come under the Statute of Limitations within twelve (12) months from the commencement of the statutory limitations period.

§ 17 Confidentiality and Advertising

- Customer agrees to transfer any technical and commercial information (e.g., cost estimates, offers and accompanying documents, drawings, models, samples, specifications, number of pieces, technical design, terms and conditions, customers, suppliers, etc.) that FTG discloses to Customer or of which Customer becomes aware during the course of the business relationship with FTG and that is not yet in the public domain as confidential and not to disclose the same to third parties without the prior written consent of FTG.
- Customer shall return the records, documents and items referred to in par. 1 no later than at the end of the contract, and, upon request made by FTG, any time at its own risk and cost, unless the statutory retention obligations ("Aufbewahrungspflichten") provide otherwise.
- Customer shall not include the FTG company name or trademarks in a reference list, use the business relationship with FTG in any other manner for advertising or promotion purposes, or use FTG advertising material, in particular, photos and product illustrations and descriptions, for its own advertising purposes, unless it has obtained the prior written consent of FTG.

§ 18 Retention of Vicarious Agents

- FTG may retain or replace vicarious agents without the prior consent of Customer.
- FTG is liable for any fault of their agents in the same manner as for its own fault subject to the liability exclusions and limitations set forth in these General Terms and Conditions.

§ 19 Place of Performance, Venue and Governing Law

- The place of performance for all supplies and/or services is 78098 Triberg, Germany, unless the parties agree otherwise.
- The competent courts at the FTG place of business have sole jurisdiction if Customer is a business person, a legal entity or a special fund under German public law ("öffentlich-rechtliches Sondervermögen") or does not have a place of general jurisdiction in Germany. FTG has the right to bring actions against Customer before other competent courts in accordance with the statutory provisions.
- The contract shall be governed by German law, and the UN Convention on the Sale of Goods shall be excluded.

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