

## **GENERAL CONDITIONS OF SALE AND DELIVERY of FAG Industrial Services GmbH**

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**All of our deliveries and services (the “Deliverables”) to individuals, companies, legal entities, subject to public law, or special assets governed by public law are governed exclusively by the following terms and conditions:**

### **I. OFFER AND ACCEPTANCE / WRITTEN FORM**

1. The contract as well as any changes, ancillary agreements and other agreements become binding only upon confirmation by us. The contract as well as any changes, ancillary agreements, declarations regarding its termination or other declarations and notifications require text form (§ 126 b German Civil Code – *BGB*) to the extent these terms and conditions do not specify otherwise.
2. The purchaser accepts our General Conditions of Sale and Delivery at the time of receipt of our confirmation and/or the acceptance of the ordered goods or services. We are not bound by general terms and conditions of the purchaser that differ from these general conditions. Such deviating terms and conditions do not become part of the contract, either by acceptance of the order or implicitly by another act.

### **II. PRICES / ANCILLARY COSTS**

1. The applicable prices consists of the agreed upon prices and discounts plus the relevant statutory value added tax but do not include packaging and shipping.
2. We have the right to invoice an additional processing fee for an order if quantities do not reach the minimum quantities and/ or minimum order value as contained in the relevant price list.
3. If we are delivering services, the purchaser is, in addition to the agreed upon compensation, responsible for all other ancillary costs, including, without limitation, travel costs, shipping costs for tools and personal effects and daily allowances (*Auslösung*).

### **III. DELIVERY TIMES / DEFAULT / SCHEDULE TRANSACTIONS / PARTIAL DELIVERIES**

1. Delivery periods begin to run at the time of confirmation of the order. The delivery periods are contingent upon (i) receipt of all documents required approvals and releases, in particular drawings and specifications, in each case to the extent they were to be delivered by the purchaser, and (ii) compliance by the purchaser with the agreed upon payment terms and other obligations. If these conditions are not met in a timely fashion, the delivery periods will be extended accordingly. The foregoing does not apply if we are responsible for the delay.
2. In case of unforeseen and unavoidable events in the production or delivery of the goods or services or other obstacles such as acts of god, labor disputes or other disruptions in our own business or in the business of our suppliers as well as delayed delivery by our suppliers will entitle us to extend the delivery period by a period of time equal to the duration of such force majeure event. We will inform the purchaser of the start and end of such circumstances as soon as possible.
3. To the extent we are in default and the purchaser incurs damages as a result thereof, the purchaser may demand a default compensation. Such default compensation will be for each full week one-half percent (0.5 %) of the value of the part of the total delivery that could not be used as anticipated by the contract as a result of the delay, but in no event more than five percent (5 %) of such value. All other rights for delay are governed exclusively by Article X, Sections 2 and 3 hereof. The purchaser may rescind the contract in accordance with the applicable statutory provisions only if we are responsible for the delay in the delivery of the Deliverables.
4. To the extent that we have agreed with a purchaser that a particular delivery volume will be delivered within a specified time period (“Agreed Period”) and that the purchaser has the right to determine the specific delivery date, the purchaser must notify us of the desired delivery date not less than twelve (12) weeks prior to such date. After the Agreed Period has expired, we may invoice the purchaser for any volume of products with respect to which delivery has not been requested and deliver such products.

5. Partial delivery of Deliverables is permissible to the extent such partial deliveries of Deliverables are not unreasonably burdensome for the purchaser.
6. If shipping or delivery are delayed by more than two weeks at the request or instigation of the purchaser, we may invoice the purchaser for each week or partial week of delay one-half percent (0.5 %) of the value of the order, but in no event more than five percent (5.0 %). We expressly reserve the right to assert any additional rights we may have.

#### **IV. PACKAGING / SHIPPING / TRANSFER OF RISK**

1. Delivery is EXW (most recent Incoterms) from a location chosen by us. The method of packaging and the packaging material will be determined by us in our sole discretion.
2. Palettes, containers, and other reusable packaging remains our property and must be returned by the purchaser to our delivery center without undue delay and at no costs to us. We will invoice disposable packaging at cost and will not take back such packaging.
3. The purchaser is responsible for additional costs for express shipping and for the mailing costs for small item deliveries.

#### **V. ASSEMBLY AND INSTALLATION**

Unless agreed otherwise in writing, the following shall apply to the assembly and installation:

1. The purchaser must order in time and bear all costs for:
  - (a) all underground work, construction work, and other ancillary works outside of our trade, including in each case the necessary skilled and unskilled personnel, materials, and tools;
  - (b) the necessary materials and items required for the installation and start up such as scaffolds, hoists and other apparatuses, fuel and lubricants;
  - (c) energy and water at the location of use including the connections, heating, and lighting;
  - (d) at the place of installation adequate, dry and lockable rooms in sufficient numbers and of appropriate size to store the machine parts, apparatuses, materials, tools, etc., and for our installation personnel adequate work and lounge room facilities with sanitary installations appropriate under the circumstances. In addition, the purchaser shall, for purposes of protecting our possessions and our installation personnel, take measures equivalent to those measures the purchaser would take for the protection of its own possessions;
  - (e) Protective clothing and protective devices that may be required at the location of installation as a result of special circumstances.
2. Prior to the start of installation the purchaser shall make available to us, irrespective of whether we have made a request, (i) the necessary information regarding any buried electricity, gas lines and water ducts and other similar installations and (ii) the necessary statics information.
3. Prior to the commencement of installation or assembly, the material provisions and items that are necessary for commencing the works must be provided at the installation or assembly site and all preparatory and preliminary works to be conducted prior to installation/assembly must have progressed sufficiently so that the installation and/or assembly can be commenced as agreed and continue to be conducted without interruption. Delivery access to the site as well as the assembly/installation site itself must be leveled and cleared.
4. Should the assembly, installation or start up be delayed as a result of circumstances that are not our responsibility, the purchaser will be responsible for paying a reasonable amount for the waiting period and for all costs of any additional travel of our installation personnel that may be required.
5. The purchaser must, on a weekly basis, confirm the working hours of the installation personnel by signing the installation/assembly sheet.

#### **VI. REJECTION OF DELIVERABLES**

The purchaser may not reject any Deliverables because of immaterial defects.

#### **VII. ACCEPTANCE (*Abnahme*)**

1. If we request that the purchaser conduct a partial or final acceptance, the acceptance procedure must be conducted within two weeks of such request. If the acceptance procedure does not take place within this time period, the acceptance is deemed to have occurred.
2. Acceptance will also be deemed to have occurred if the Deliverables have been put into operation. Such deemed acceptance may also occur after an agreed upon test phase, as the case may be.

### **VIII. PAYMENTS**

1. Payment must be made without deductions to one of our accounts within thirty (30) days of the date of the invoice.
2. The purchaser is in payment default as soon as the agreed upon payment date has passed unless payment does not take place due to a circumstance for which the purchaser is not responsible.
3. It is not permissible to hold back payments by reason of counter claims or counter rights or to set off with counter claims or counter rights unless such counter claims or counter rights are undisputed, have been finally judicially determined, or are ripe for decision.
4. We have the right to declare that all of our rights/claims are immediately due if circumstances become known that indicate a deterioration of the asset situation or financial condition of the purchaser.

### **IX. RETENTION OF TITLE**

1. We retain title to all goods delivered by us until all claims resulting from the business relationship with the purchaser have been satisfied ("Retained Goods"). In cases of current accounts the retained property is deemed to be collateral for the claim to the balance of the account.
2. If the goods with respect to which title has been retained become part of a new item by way of connection or is built-in and if such item is owned by the purchaser, it is hereby agreed that the purchaser transfers co-ownership to the new item to us and acts as bailee without compensation for such item. Our co-ownership share shall be determined by the relationship of the value of the goods with respect to which title was retained to the value of the new item.
3. The purchaser hereby assigns to us all claims against its customers that result from the sale of the goods with respect to which title was retained. If the goods with respect to which title was retained are sold together with other goods that are not owned by us, then the purchaser assigns to us such part of the claim resulting from the sale that is equal to the invoiced amount for the goods with respect to which title was retained. If an item with respect to which title was retained is only partially owned by us and is sold, the part of the claim resulting from the sale that is assigned to us will be equal to our percentage of ownership in the goods with respect to which title was retained.
4. We are granting revocable authority to the purchaser to collect any claims resulting from the further sale of the Retained Goods. If requested, the purchaser must notify its customers of the assignment of the claim and deliver to us all information and documents required to enforce our rights.
5. We are obligated to release the collateral to which we are entitled to the extent that the value of such collateral exceeds the claims to be secured by more than ten percent (10 %).
6. The purchaser must notify us without undue delay if the items subject to retention of title are attached or if our rights are adversely affected by third parties in any other way.
7. To the extent mandatory legal provisions of the relevant foreign country do not contemplate a retention of title within the meaning of Article IX, sections 1-6, but such country's legal system provides for other forms of security to secure payment claims for invoices by sellers, such forms of security are hereby deemed to be agreed to. The purchaser is obligated to cooperate with us with respect to all actions we may reasonably request to be undertaken in order to protect our title or the replacement rights with respect to the retained goods.

### **X. WARRANTIES / LIMITATION OF LIABILITY**

1. The statutory rights of the purchaser apply subject to the following conditions:
  - a. To the extent Deliverables are unusable in whole or in part due to defects we will, in our reasonable discretion, choose to cure the defects at no cost to the purchaser or deliver, at no cost to the purchaser, Deliverables without defects (collectively, "Supplementary Specific Performance"). In addition we will bear the purchaser's direct costs of disassembly and assembly. Such an obligation to bear the direct disassembly and assembly costs does not exist if the costs are incurred at any other location than the original location. The obligation also does not exist if there is no reasonable relationship between such costs and the delivery price of the defective Deliverables. All other costs are borne by the purchaser. We are not responsible for damages due to natural wear and tear during the time of use.

b. The purchaser must grant to us a reasonable period of time and reasonable opportunity to permit Supplementary Specific Performance, which Supplementary Specific Performance will be performed by us in our reasonable discretion. The purchaser has the right to perform Supplementary Specific Performance itself or to cause a third party to perform such Supplementary Specific Performance and, in each case, demand reimbursement of the costs associated therewith, only (i) in case of emergency relating to operational security, (ii) to avoid unreasonably high damages or (iii) when we are in default with respect to the Supplementary Specific Performance. The purchaser must notify us immediately of an occurrence of any of the events described in the previous sentence.

c. The delivery of technically comparable or better components does not constitute a defect, even if those components were produced by a different manufacturer.

2. The additional statutory rights of the purchaser apply subject to the following:

We are liable only in one of the following events and in each case our liability is limited to the foreseeable damages that are typically in transactions of this kind:

(1) wilfull breach of duties;

(2) grossly negligent breach of duties by our statutory representatives or persons employed by us in the performance of our obligations (*Erfüllungsgehilfen*);

(3) wilfull or negligent injuries to life, body or health;

(4) fraudulent withholding of information about defects or guaranties for the properties of delivered goods;

(5) wilfull or negligent breach of significant contractual duties – however, in cases of (i) simple negligence or (ii) gross negligence by individuals other than executives (*leitende Angestellte*), limited to the damages reasonably foreseeable for the relevant type of contract;

(6) to the extent we are liable pursuant to mandatory provisions of the Product Liability Act (*Produkthaftungsgesetz*) for personal injury or property damage to privately used objects.

3. Our liability is hereby excluded unless Article III Section 3 or Article X Sections 1 or 2 provide otherwise.

4. Defects must be notified to us after discovery without undue delay. The delivered goods with respect to which defects have been notified must be made and kept available to us. We will bear the costs for shipment back to us only if such shipment takes place at our request.

5. The purchaser bears the burden of proof that all requirements are met for the claims alleging our breach of duty to be valid as asserted by the purchaser. This burden of proof applies also to our wilfull misconduct or negligence.

6. Claims for defects are subject to a time bar period of twentyfour (24) months beginning with the delivery of the Deliverables or, as the case may be, acceptance of the Deliverables, in each case unless applicable mandatory statutory law provides for a longer limitation period.

7. § 350 of the German Civil Code (*BGB*) applies *mutatis mutandis* to statutory rescission rights.

## XI. GUARANTEE / PROCUREMENT RISK

Guarantees and procurement risks (*Beschaffungsrisiko*) require, in order to be validly assumed by us, (i) a specific assumption of risk expressly designated as such and (ii) written form. The purchaser agrees with us that statements in our catalogues, printed material, brochures and other general information in no event and at no time constitutes a guaranty or the assumption of the procurement risk.

## XII. USE OF SOFTWARE

To the extent the scope of delivery includes software that was developed by us and absent express agreements to the contrary, we hereby grant to the purchaser, at no charge, the right to use this software in connection with the purchaser's business activities and to reproduce the software within the statutorily permitted scope. Changes to the source code are not permitted. Use of the software by third parties is not permitted. The purchaser may also not grant any sub-licenses to third parties. The purchaser may not remove manufacturer information – in particular copyright labels or notices – or make any other modifications without our prior written express consent.

We reserve all other rights to the software and the accompanying documentation, including copies.

### **XIII. CONFIDENTIALITY**

1. The purchaser and we will keep confidential all information received from the other party. This confidentiality provisions continues to apply after termination of the delivery contract. The confidentiality obligation does not apply to information that (i) the receiving party had already obtained legitimately at the time of disclosure, provided such information was not subject to a confidentiality obligation or (ii) that the receiving party later obtains independently and legitimately without being obligated to keep such information confidential, or (iii) that is or becomes generally known without any breach of contract by one of the parties.

2. We hereby point out that it may be beneficial for the purchaser if we disclose information about the purchaser's company or the purchaser's processes that we have obtained in connection with the cooperation with the purchaser to individual employees of the Schaeffler group. In each case we will discuss with the purchaser prior to disclosure if and to what extent we disclose such information to members of the corporate group. Any confidentiality agreement to be agreed upon should consider this matter.

3. Each party retains title and all rights, including, without limitation, copyrights and other intellectual property rights, to all documents or other media or copies thereof made available to the other party. Such documents or other media may be reproduced, replicated or transferred to third parties only with the express consent of the party making them available.

### **XIV. MISCELLANEOUS**

1. The place where our delivery originates shall be deemed the place of performance. The place of performance for payments shall be Herzogenrath, Germany.

2. The place of competent jurisdiction is Aachen, Germany. Notwithstanding the foregoing, we will have the right to bring actions also at the principal place of business of the purchaser.

3. The contractual relationship is governed by the laws of the Federal Republic of Germany except for the rules governing the of conflict of laws. **The application of the Convention for the International Sales of Goods (CISG) is expressly excluded.**

4. The failure to assert, in whole or in part, any rights from this delivery contract or to assert such right belatedly shall not be construed as a waiver of this or any other right.

5. If a specific provision of these General Conditions of Sale and Delivery is or becomes invalid, the remaining provisions shall remain valid.

6. Please note that we store and process personal data in the course of business transactions. All legal regulations concerning data privacy are observed.