

General payment and delivery terms

1. Scope of validity and general points

1.1 All our deliveries, performances and offers to enterprises in the sense of Article 14 of the German Civil Code, legal entities under public law and special funds under public law (in each case hereafter termed "Orderers") are carried out exclusively on the basis of these general terms of delivery and payment.

1.2 General terms of business of Orderer, that have not been explicitly recognized by ourselves in writing, are not applicable; this statement holds good also in situations where we have not explicitly refuted the applicability of the terms of Orderer.

1.3 Our general terms of delivery and payment hold good in addition for all future contracts between ourselves and Orderer relating to deliveries and performances as well as relevant offers.

1.4 Our general terms of delivery and payment can be called down on our home page www.feingieBerei-spremberg.de under downloads.

1.5 In the absence of a special agreement a contract comes into being with our written confirmation of order.

1.6 We reserve all rights in respect of title and copyright to samples/patterns, cost estimates, drawings and similar information of a physical and non-physical form including also in an electronic form; such things may be made accessible to third parties only when we have agreed to this in advance.

2. Prices and payment

2.1 In the absence of a special agreement our prices hold good ex works including loading in our works but not including packing and unloading. Turnover tax at the particular legal rate will be added to the prices.

2.2 The deducting of a cash discount is not permitted unless this has been agreed separately in writing.

2.3 Orderer is only entitled to withhold payments in so far as his counter-claims are not in dispute or have been established legally.

2.4 Orderer is only entitled to carry out offsetting with counter-claims from other legal relationships in so far as his counter-claims are not in dispute or have been established legally.

3. Delivery time and delays

3.1 The delivery time for our goods and other performances results from the agreements between ourselves and Orderer. Preconditions for the maintenance of the delivery time by ourselves are that all commercial and technical questions between us have been clarified and that Orderer has fulfilled all the obligations he is obliged to fulfil such as the obtaining of the official certificates or approvals necessary or such as the making of an advance payment. The delivery time will be extended appropriately if this is not the case. The above does not hold good in so far as we are responsible for the delay.

3.2 Prerequisite for maintenance of the delivery time is that we receive correct deliveries on time from our own suppliers. We will notify delays that are arising as soon as possible.

3.3 The delivery time has been maintained when the goods have left our works or readiness for dispatching has been notified in each case by up to expiration of the delivery time. The date agreed for acceptance or, as the case may be, notification of the readiness for acceptance count as the decisive date for delivery in situations where acceptance is necessary and apart from situations where acceptance has been refused for a justified reason.

3.4 If dispatching or, as the case may be, acceptance of the goods is delayed for reasons for which Orderer is responsible, the costs arising from the delay will be charged to him for the period commencing one month from notification of the readiness for dispatching or acceptance.

3.5 The delivery time will be appropriately extended if failure to meet the delivery time is to be attributed to force majeure, industrial disputes or other events lying outside our area of influence. We will notify Orderer without delay of the commencement and end of such circumstances.

3.6 Orderer may withdraw from the contract without having to set a period of grace if the complete performance of the contract becomes finally impossible for us prior to the transfer of risk. In addition Orderer may withdraw from the contract if in the case of an order the execution of a part of the delivery becomes impossible and Orderer has a justified reason for refusing to accept the part delivery. If this is not the case, then Orderer has to pay that part of the contract price relating to the part delivery as made. The same holds good in situations where we are unable to perform the delivery. In addition Para. 10.2 of these terms holds good.

If the impossibility or inability to deliver occurs during the period when acceptance has been delayed or if Orderer is solely or to a large extent responsible for the impossibility or inability to deliver, then Orderer remains obliged to fulfil the quid pro quo.

3.7 If we get behind with a delivery and if as a result of this a loss arises for Orderer, then he is entitled to demand a blanket compensation for the delay. This shall amount to 0.5 % of the value of that part of the complete delivery, which as a result of the delay cannot be used on time or cannot be used in accordance with the contract, for each full week of the delay but at maximum 5 % of the value of the afore-mentioned part of the complete delivery.

If Orderer - with account being taken of the legally defined exceptional cases - sets a reasonable period of grace for us to make the performance and if we do not make the performance within this period, then Orderer is entitled to withdraw from the contract within the framework of the legal preconditions. On our so requesting, Orderer shall be obliged to declare within a reasonable period of time whether or not he will make use of his right of withdrawal. Further claims relating to delay in delivery shall be regulated solely in accordance with Para. 10.2 of these terms.

4. Dimensions, weights, numbers of pieces

4.1 Variances in respect of dimensions, weights and numbers of piece are permissible within the framework of commercially usual tolerances, the relevant DIN regulations and technical casting requirements. Statements in our offers and confirmations of order in respect of dimensions and weights do not represent guarantees of quality/composition.

4.2 Decisive for charging are the delivery weights and numbers of pieces established by ourselves.

5. Transfer of risk, acceptance

5.1 The risk is transferred to Orderer when the goods leave our works whereby this is also the case when part deliveries are made or in the situation that we

have assumed other performances such as, for example, the shipment costs or the costs for installation. Where an acceptance procedure has to be carried out, then the date of this is decisive for the transfer of risk. The acceptance procedure shall be carried out on the appointed date or without delay thereafter or without delay following our notification of readiness for the acceptance procedure to be carried out. Orderer may not refuse acceptance on the basis of an unimportant shortcoming.

5.2 If dispatching or, as the case may be, acceptance is delayed or does not take place for reasons for which we are not responsible, then the risk passes to Orderer from the day on which readiness for dispatching or, as the case may be, acceptance is notified. We undertake to conclude the relevant insurance policies at Orderer's cost on his so requesting.

5.3 Part deliveries are permissible in so far as these are reasonable for Orderer.

6. Retention of title

6.1 We retain title to all the goods we deliver (reserved goods) up to the completion of all our claims including in particular also the particular balances receivable to which we are due from our business relationships with Orderer. The above holds good too in situations where payments are performed in respect of particularly designated claims.

6.2 We are entitled to take back the goods we have delivered in situations where Orderer behaves in a contractually incorrect manner and in particular if Orderer is in default with payments. Taking back of the goods represents withdrawal from the contract. After having taken back goods, we are entitled to dispose of them; the proceeds from the disposal of the goods less reasonable costs for the disposal will be set against Orderer's liabilities.

6.3 Orderer is obliged to treat the goods in a careful manner; in particular he is obliged to insure them adequately at his expense at their new value against damage/loss by fire, water and theft. Orderer must carry out maintenance and inspection work on time at his expense in so far as such work is necessary.

6.4 Orderer has to inform us in writing without delay in the case of attachments or other interventions by third parties so that we can bring an action in accordance with Article 771 of the German Civil Process Order. Orderer is liable for the loss we suffer if the third party is not able to refund to ourselves the costs of the in-court and out-of-court proceedings in accordance with Article 771 of the German Civil Process Order.

6.5 Orderer is entitled to sell on the goods in an orderly business process; however he assigns to us now all claims in the amount of the final invoice amount (including turnover tax) up to the amount of our claim, which claims arise for him from the selling-on vis à vis his customers or third parties and carries out this assignment regardless of whether the goods were sold on without or following further processing. Orderer remains empowered to collect his claims also after the afore-mentioned assignment. Our empowerment to collect the claim ourselves remains unaffected by the above. However we undertake not to collect Orderer's claims ourselves in so far as Orderer meets his payment obligations from the proceeds as collected, does not get into default with payments and in particular does not make application for the opening of settlement or insolvency proceedings or in so far as a cessation of payments situation is not present. However, if one of these situations is present, then we may demand that Orderer makes known to us the claims that have been assigned and the respective debtors, that Orderer makes all the statements necessary for the collection and hands over all the related documents to ourselves and that he informs his debtors (third parties) of the assignment.

6.6 The processing or conversion of the goods by Orderer shall always be carried out for ourselves. If our goods are combined with other goods that do not belong to us, then we shall acquire joint title to the new thing in the ratio of the value of our goods (final invoice amount including turnover tax) to the other objects processed at the time of the processing. Holding good for the new thing arising from the processing are the same conditions as for the goods supplied under retention of title.

6.7 If our goods are combined in an inseparable manner with other goods that do not belong to us, then we shall acquire joint title to the new thing in the ratio of the value of our goods (final invoice amount including turnover tax) to the other objects combined at the time of the combining. If the combining is carried out in such a way that the thing of Orderer is to be regarded as the main thing, then it holds good as agreed that Orderer transfers to ourselves the proportionate amount of the joint title. Orderer shall look after for us the sole title or joint title that arises.

6.8 Orderer also assigns to ourselves the claims for the safeguarding of our claims vis à vis Orderer which claims arise vis à vis a third party from the connecting of the goods with a item of real estate.

6.9 On Orderer so requesting, we undertake to release that amount of the securities due to ourselves in so far as the realizable value of our securities exceed our claims as secured therewith by more than 20 % . The selection of the securities to be released is at our discretion.

7.0 Order-related manufacturing devices, parts to be incorporated in castings

7.1 Order-related manufacturing devices such as models, templates, core boxes, moulds, casting tools, fixtures and inspection gauges, which are made available to us by Orderer, are to be sent to us free of charge. The conformity of the manufacturing devices as made available to us by Orderer with the contractual specifications or with the drawings or samples/patterns passed to us will be checked by ourselves only on the basis of explicit agreements. We may change the manufacturing devices as made available to us by Orderer should this appear to us to be necessary for technical casting reasons and whereby the workpiece will not be changed thereby.

7.2 The costs for the changing, maintaining and replacing of Orderer's manufacturing devices shall be borne by Orderer

7.3 The manufacturing devices will be treated and looked after by ourselves with the same care with which we are used to treating our own things. We are not liable for chance loss or impairment of the manufacturing devices unless the preconditions for our liability in accordance with Para. 10.2 of these terms are given. We may send back to Orderer at his cost and risk those of his manufacturing devices which are no longer needed by ourselves , or - if Orderer does not meet our request that he picks them up within a reasonable period of time as set - we may look after them charging therefor the usual costs and

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have them destroyed after having set a reasonable period of notice and having sent a reminder.

7.4 Manufacturing devices, which are manufactured or procured by ourselves on the instructions of Orderer, remain our property even after account has been taken of the proportionate cost therefor. They will be looked after by ourselves for a period of three years from the last casting process.

In so far as it is agreed as an exception to the above sentence that the Orderer shall become the owner of the devices, then title thereto shall pass to Orderer on payment of the agreed price or, as the case may be, part of the cost. In this situation the handing over of the devices shall be replaced by our obligation to look after the devices.

The looking-after relationship may be ended by Orderer at the earliest 2 years after the transfer of title by the giving of notice in so far as there is no important reason.

7.5 Claims under copyright law or commercial proprietary rights may be advanced by Orderer only to the extent that he draws our attention to these rights and explicitly reserves these rights.

7.6 If with the use of a manufacturing device, which is only capable of being used once, there is scrap, then Orderer shall either again provide a manufacturing device or bear the cost of the replacement device.

7.7 The parts to be incorporated in castings by ourselves must be supplied by Orderer in a dimensionally correct and perfect state. Orderer is to supply free of charge replacements for parts which become unusable by reason of rejects.

8. Confidentiality

8.1 All documents (including here samples/patterns, models and data) and knowledge, which each contractual partner receives from the business relationships, shall be used only for the purposes to be pursued together and shall be kept secret from third parties with the same care that the particular contractual partner would use for his own documents and knowledge in so far as the other contractual partner has designated these items as confidential or has an obvious interest that they be kept confidential.

8.2 This obligation commences on the documents or knowledge first being received and ends 36 months after the end of the business relationship.

9. Claims of shortcomings

For material and legal shortcomings in connection with the delivery we are liable, whereby further claims are excluded, - subject to Para. 10 of these terms - as follows:

Material shortcomings

9.1 All goods, which are found to be defective as a result of a circumstance lying prior to the transfer of risk, are to be remediated or replaced by perfect goods whereby the choice is ours. The establishment of such shortcomings is to be notified to us without delay in writing. Goods that are replaced become our property.

9.2 Following reaching of agreement with ourselves, Orderer shall give us the necessary time and opportunity for the carrying out of all the remedial work and making of replacement deliveries; otherwise we are exempt from the liability for the consequences resulting therefrom. Only in urgent cases of the hazarding of the operational safety or, as the case may be, for the warding off of disproportionately greater damage/loss does Orderer have the right - whereby we are to be informed thereof immediately - to eliminate the shortcoming himself or have it eliminated by a third party and to demand that we make good the expenditure necessary.

9.3 In so far as the complaints are shown to be justified, we shall bear the expenditure necessary for the purposes of the rectification performances, in so far as no unreasonable burden for us results thereby. In the case of the sale of a newly manufactured thing, we will make good in addition the expenditure incurred by Orderer within the framework of recourse claims in the delivery chain within the scope of our legal obligations.

9.4 Within the framework of the legal regulations Orderer has a right to withdraw from the contract if we - subject to account being taken of the legal exceptional cases - permit a reasonable period, that Orderer has set for us, for the rectification or replacement delivery relating to a material shortcoming to expire fruitlessly. Orderer is only entitled to a reduction of the contract price if the shortcoming is only an unimportant one. Apart from this, Orderer has no rights for a reduction of the contractual price.

9.5 Further claims shall be determined solely in accordance with Para. 10.2 of these terms.

9.6 In particular no liability is undertaken in the following cases:

Unsuitable or inappropriate use, faulty installation/erection or, as the case may be, commissioning by Orderer or a third party, natural wear and tear, faulty or careless treatment, improper maintenance, unsuitable operating resources, chemical, electrochemical or electrical factors of influence - in so far as we are not responsible for these.

9.7 We are not liable for the related consequences if Orderer or a third party carries out improvements in a faulty manner. The same holds good if changes are carried out to the goods without our agreement thereto in advance.

Legal deficiencies

9.8 If the use of the goods leads to the infringement of commercial proprietary rights or copyrights within Germany we will at our expense obtain the right for the Orderer to continue to use the goods or we will modify the goods in a manner reasonable for Orderer in such a way that infringement of proprietary rights no longer exists.

Orderer is entitled to withdraw from the contract if this is not possible at economically reasonable conditions or within a reasonable period of time. We also have the right to withdraw from the contract under the afore-mentioned preconditions.

In addition we will exempt Orderer from undisputed or legally established claims of the relevant owner of the proprietary rights.

9.9 Our obligations named under Para. 9.8 are final subject to Para. 10.2 of these terms for cases of infringement of commercial proprietary rights or copyrights.

Our obligations exist only if

9-9.1 Orderer informs us without delay of the advancing of claims of infringement of commercial proprietary rights or copyrights.

9.9.2 Orderer supports us in a reasonable manner in the fending off of claims that are made or, as the case may be, permits us to carry out the modification measures in accordance with Para. 9.8.

9.9.3 All fending off measures including out-of-court settlements remain open for us.

9.9.4 The deficiency in title is not based on an instruction of Orderer, and

9.9.5 The legal infringement was not caused by Orderer changing the goods on his own or by using the goods in a manner not in accordance with the contract.

10. Our liability, exclusion of liability

10.1 Whereby further claims by Orderer are excluded, the modes of regulation in accordance with Paras. 9 and 10.2 of these terms hold good if the goods cannot be used in accordance with the contract as a result of culpably omitted or incorrect suggestions/advice, whereby these omissions or incorrect suggestions or advice may have taken place prior to or following conclusion of the contract, or through the culpable infringement of other contractual subsidiary obligations including here in particular instructions for operation and maintenance.

10.2 In respect of damage/loss which takes place but not on the goods themselves and regardless of the legal reasons, we are liable only in the case of

- Deliberate intent
- Gross carelessness of the owner / management bodies or executives,
- Culpable mortal injury, physical injury or damage to health,
- Shortcomings which we have maliciously concealed
- Within the framework of a promise of guarantee
- Shortcomings of the goods in so far as one is liable for these under the product liability law for damage to persons or material damage to privately used objects.

In the case of culpable infringement of important contractual obligations we are also liable in the case of gross carelessness of non-executive employees and in the case of slight carelessness; in the last mentioned situation our liability is restricted to contractually typical and foreseeable damage/loss. Further claims are excluded.

11. Limitation period

All claims of Orderer - for whatever legal reasons whatsoever - become time barred in 12 months; this statement holds good too for time barring of recourse claims in the delivery chain in accordance with Article 445b Para. 1 of the German Civil Code, in so far as the last contract in this delivery chain is not a purchase contract for consumer goods. The suspension expiry from Article 445b Para. 2 of the German Civil Code remains unaffected. The legal periods hold good for damage/loss claims in accordance with Paras. 10.2 a-d and f of these terms. They hold good too for shortcomings of a building/structure or for delivery items, which delivery items were used for a building/structure in accordance with their usual ways of use and caused the defectiveness of this building/structure.

12. Use of software

Orderer is granted a non-exclusive right to use the software including its documentation as delivered in so far as software is included in the scope of delivery. The software is entrusted to Orderer for use on the delivery object for which it is intended. Use of the software on more than one system is prohibited. Orderer may duplicate, revise, translate or convert (from object code into source code) the software only within the extent as legally permitted (Articles 69 a ff. of the German copyright law). Orderer undertakes not to remove or change the manufacturer's statements and here in particular copyright notices without our prior explicit agreement thereto.

All other rights to the software and its documentation including copies thereof remain with ourselves or, as the case may be, with the supplier of the software. The issuing of sub-licences is not permitted.

13. Applicable law, venue, place of performance

13.1 Holding good exclusively for all legal relationships between ourselves and Orderer is the law of the Federal Republic of Germany whereby application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

13.2 If Orderer is a businessman, a legal entity under public law or a special fund under public law or if he has no general venue in the Federal Republic of Germany, then the venue is the court competent for our registered office. However we are also entitled to bring an action at the principal seat of Orderer.

13.3 Our registered office is the place of performance in so far as something different is not stated in the confirmation of order.

FEINGIESSEREI
spremberg

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