General terms of trade
Ferro Duo GmbH (01/2022)

I. General remarks

These terms shall be the basis of all – also future – conclusions of transactions concerning supplies and services, with companies, public law bodies and public special assets. Deviating terms of the Supplier's which we do not expressly recognize in writing, shall not be binding on us, even if we do not explicitly object to them.

II. Quotations, order acceptance and prices

1. Our quotations shall always be without engagement. They shall remain subject to sale. Verbal agreements, assurances and guarantees by our employees shall only become binding after written confirmation by us.

2. Quotations, estimates, drawings and brochures with all documents must not be made accessible to third parties. We shall retain copyright to them and, as long as the order is not placed with us, also ownership of them.

3.1. Qualities, dimensions and weights shall be determined in accordance with the DIN/EN standards applying at the time of the conclusion of the contract, in the absence of such in accordance with business practice, in particular with the Incoterms in their respective latest version and shall not constitute assurances or guarantees, just as little as they constitute test certificates, manufacturer's declarations and corresponding marks such as CE and GS.

3.2. Indications of dimensions and weights shall otherwise be subject to the usual variances. 'Approx.' before indications of quantities shall entitle us to supply 10 % more or less.

4. Decisive for the scope of services shall be our quotation and/or our declaration of acceptance.

Any objections to these declarations are to be made known to us in writing without delay before the execution of the order, at the latest within one week of receipt.

5. The prices are to be understood as ex works or warehouse plus VAT, freight and cost of collection and disposal of packaging as well as unforeseen additional expenditure resulting from the making of delivery and for which we have not agreed on any additional prices shall be borne by the Customer unless we are responsible for their being incurred.

6. Increases in our costs, e.g. changes to purchase prices, wages, freights, customs duties and taxes and any other levies or charges shall entitle us to a corresponding price adjustment, if there is a period of more than four weeks between the conclusion of the contract and delivery.

III. Making of delivery and performance of service

1.1 Delivery dates or deadlines that have not been expressly agreed as binding are only non-binding information.

1.2 Delivery shall be made ex works or warehouse according to the choice of shipping route and means as well as of the forwarding agent or carrier by us at the Customer's risk. Unloading must be carried out by the Customer without undue delay and properly and appropriately. Waiting times shall be at the Customer's expense.

1.3 If, without any fault of our own, transport via the envisaged route or to the envisaged place within the envisaged time is made impossible or considerably more difficult, we shall be entitled to deliver via a different route or to a different place at the Customer's expense.

2. Insurance against damage in transit and transport losses shall be taken out only at the express wish of the Customer for the Customer's account.

Reports of damage or loss are to be made immediately upon receipt of the goods and information is to be provided in writing concerning the type and extent without undue delay.

3. Goods for which notification of readiness for despatch has been given must be called off without undue delay. If that does not happen, we shall be entitled, at our option, to dispatch them at the expense and risk of the Customer or, at our discretion, to store them and to charge for such immediately.

4.1. The Customer shall have to accept part shipments, unless the Customer provides evidence of the fact that their acceptance cannot reasonably be expected of it. We shall be entitled to excess or short deliveries/services customary in the trade.

4.2. In the case of conclusions of contracts with continuous despatch we must be given call-offs for approximately equal monthly quantities.

4.3. If the contractual quantity is exceeded by the Customer's individual call-offs, we shall be entitled, but not obliged to deliver the surplus quantity. We can invoice the surplus at the prices valid at the time of call-off or delivery.

5. The performance of the contract and the meeting of delivery times and time limits for services assume:

- timely and correct delivery to ourselves by our supplier, unless the non-delivery or delay is due to a fault of ours,
- correct and timely performance of the cooperation actions which the Customer is obliged to carry out, in particular provision of all of the information, documents and services necessary for the performance of the services,
- the correct and timely completion of the advance performance of work/services by the customer or other third parties, in particular the provision of suitable unloading aids, necessary for the performance of our work/services.

6. The delivery times and time limits for work/services shall be extended by the period of time by which the Customer does not meet its obligations towards us as well as in the event of a labour dispute for the duration of the disruption induced by it. The same shall apply by analogy to the delivery and work/service dates.

7.1. If the underlying contract is a fixed transaction within the meaning of § 376 HGB, we are liable according to the legal provisions.

7.2. The same applies if, as a result of a delay in delivery for which we are responsible, the customer is entitled to assert his interest in the further fulfillment of the contract. In this case, our liability is limited to the foreseeable, typically occurring damage, if the delay in delivery is not due to an intentional breach of the contract for which we are responsible, whereby we are to blame for our representatives or vicarious agents. We are also liable to the customer in the event of a delay in delivery in accordance with the statutory provisions if this is due to an intentional or grossly negligent breach of the contract for which we are responsible, whereby we are to blame for the fault of our representatives or vicarious agents. Our liability is limited to the foreseeable, typically occurring damage if the delay in delivery is not due to an intentional violation of the contract for which we are responsible.

7.3. In the event that a delay in delivery for which we are responsible is based on the culpable breach of a contractual obligation, the fulfillment of which enables the proper execution of the contract in the first place and on the observance of which the buyer may regularly trust and in fact does, whereby we are at fault on the part of our representatives or We are liable according to the statutory provisions, with the proviso that in this case the liability for damages is limited to the foreseeable, typically occurring damage. Any further liability for a delay in delivery for which we are responsible is excluded.

IV. Payment

1. General terms of payment

1.1. Payments shall be due in euros immediately without deduction. If agreed upon, discount for early payment shall be granted, if all of the previous invoices have been settled, with the exception of such invoices as are opposed by justified objections by the customer. For calculation of discount for early payment the net invoice amount after deduction of discounts, freight etc. shall be decisive.

1.2. The Customer shall not be allowed to claim any rights of retention from other business transactions also within the current business relations. Offsetting by the customers shall be excluded, unless the counter-claim is undisputed.

1.3. The Customer shall be in default at the latest 14 days after delivery or in the event of the exceeding of a time allowed for payment going beyond this time limit. In these cases we shall charge interest at a rate of 8 % above the base interest rate. The right to claim for any possible additional loss shall be reserved.

1.4. If, after the conclusion of the contract, it becomes recognizable that our claim for payment is endangered by the lack of ability to pay on the part of the customer, we shall be entitled to the rights under Art. 321 of the German Civil Code (BGB) and in fact also for all further outstanding work/services from the business relationship with the Customer. If the Customer does not perform the work/service or if it does not provide collateral within a reasonable period of time, we shall also be entitled to accelerate maturity of all accounts receivable under the current business relationship not subject to the statute of limitations so that they are payable immediately.

1.5. In the cases of Nos. 3 and 4, we can demand payment in advance for deliveries still outstanding.

1.6. The consequences mentioned in Nos. 3 to 5 can be averted by the Customer by the provision of collateral in the amount of our endangered claim for payment.

1.7. Otherwise the statutory regulations concerning default in payment shall remain unaffected.

2. Special terms of payment for the payment transaction

2.1. Payments shall be made after complete delivery and if agreed or provided for by law after acceptance as well as receipt of the invoice within 30 days net.

2.2. Interest after due date cannot be claimed. The default interest rate shall be 5 % points above the basic interest rate. In any case we shall be entitled to provide evidence of a lower loss caused by delayed performance than that claimed by the Customer.

2.3. We shall be entitled to offsetting and retention rights within the statutory scope.

V. Transfer of risk

The risk passes to the buyer, the goods of the transport company that has left our warehouse. Shipping always belongs at the risk of the buyer. This also gilds if we bear the costs of transport and / or insure them from individual agreements. All actives delivery clauses only regulate the cost bearing.

VI. Retention of title

1.1. All of the goods delivered shall remain our property (goods subject to retention of title) up to the settlement of all claims, in particular also of the particular balances of account receivable to which we are entitled within the scope of the business relationships.
This shall also apply to future accounts receivable to be incurred and conditional accounts receivable, e. g. resulting from acceptors' bills, or in the case of the cheque/bill of exchange procedure up to the honouring of the bill of exchange by the Customer and also, if payments are made for specially designated accounts receivable.

1.2. The balance reservation shall finally expire upon the settlement of all the accounts receivable which are still outstanding and covered by this balance reservation at the point in time of the payment.

1.3. The customer must treat the goods subject to retention of title with care and insure them sufficiently at their own expense against fire, water and theft damage at replacement value. Maintenance and inspection work that is required must be carried out in good time by the customer at his own expense.

2. Machining and processing of the goods subject to retention of title shall be carried out for us as the manufacturers in the meaning of Art. 950 of the German Civil Code (BGB), without any obligation for us. The machined and processed goods shall be considered goods subject to retention of title in the meaning of No. 1. For processing, combination and mixing of the goods subject to retention of title with other goods by the customer we shall be entitled to co-ownership percentagewise of the new item in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods used. If our ownership expires due to combination or mixing, the customer shall now already transfer to us the rights of ownership to which it is entitled to the new stock or the item within the scope of the value of the goods subject to retention of title and shall preserve them free of charge for us. Our co-ownership rights shall be deemed to be goods subject to retention of title in the meaning of No. 1.

3.1. The Customer may sell the goods subject to retention of title only in the ordinary course of business on its normal terms and conditions and as long as one of the cases mentioned in Items IV 3 and 4 has not occurred, provided that the accounts receivable from the resale in accordance with Nos. 4 to 6 pass to us.
The Customer shall not be entitled to any other disposal of the goods subject to retention of title.

3.2. The goods subject to retention of title are to be stored separately from other goods and/or to be identification marked as our property. We shall be entitled to seize the goods at the Customer's expense and for this purpose to enter the Customer's site or business premises. Taking back shall not be considered rescission of the contract. Regulations of the German Insolvency Act shall remain unaffected.

4.1. The Customer's accounts receivable from resale of the goods subject to retention of title, also by way of installation as an essential integral part of a plot of land, shall now already be assigned to us with all collateral. They serve the purpose of securing to the same extent as the goods subject to retention of title. If the goods subject to retention of title are sold by the Customer together with other goods not sold by us, the account receivable from the resale in the amount of the value of the goods subject to retention of title shall be assigned to us.

4.2. For the sale of goods of which we hold co-ownership shares according to No. 2, a part corresponding to our co-ownership share shall be assigned to us.

5.1. The Customer shall be entitled to collect accounts receivable from resale, unless we revoke the collection authorizations in the cases of default on payment, the non-honouring of a bill of exchange or of the application for the opening of insolvency proceedings mentioned in Section IV/.

We shall only exercise our right of revocation if, after the conclusion of the contract, it becomes apparent that our claim for payment from this or from other contracts with the Customer is endangered by the Customer's lack of ability to pay.

5.2. The Customer shall be obliged, at our request, to inform its customers immediately of the assignment to us – unless we do it ourselves – and to let us have the information and documents necessary for collection. The Customer shall in no way be entitled to further assignment of the accounts receivable. This shall also apply to factoring deals unless assignment by way of genuine factoring is involved which shall be indicated to us and in the case of which the factoring proceeds exceed the value of our secured account receivable. Upon the crediting of the factoring proceeds, our account receivable shall become due for payment immediately. If the Customer has agreed upon a prohibition of assignment, it shall hereby authorize us to collect these accounts receivable.

6. The Customer must inform us without undue delay about any attachment/seizure or any other prejudice by third parties. The Customer shall bear all of the costs which have to be incurred in order to secure the return of the goods subject to retention of title, unless they are refunded by third parties.

7. If the value of the existing securities including the goods subject to retention of title in the meaning of Item 4 exceeds the accounts receivable secured by collateral by more than 50 % in total, we shall, at the Customer's request, to that extent be obliged to release collateral at our option.

VII. Liability for material defects

1.1. Notification of material defects is to be given in writing without undue delay, at the latest within 7 days of delivery. Entrepreneurs, public law

entities and public special assets must also give notification in writing of non-obvious material defects if these can be ascertained by a reasonably acceptable examination without undue delay after their discovery, but not later than before the expiry of the agreed or statutory statute of limitations; otherwise Art. 377 of the German Commercial Code (HGB) shall remain unaffected.

1.2. If acceptance that has been agreed upon or is provided for by law is omitted for reasons beyond our control, material defects can to that extent no longer be claimed.

1.3. If material defects only become recognizable during processing, complaints can only be taken into account if the processing of these defective items is immediately suspended.

1.4. If the Customer does not give us, without undue delay, an opportunity to satisfy ourselves as to the existence of a material defect, if it does not in particular place the goods complained about or samples thereof at our disposal without undue delay, the claims for material defects shall be forfeited.

2. In the case of a justified notice of defects received within the time limit, we can initially at our option eliminate the defect or deliver an item free of defects (subsequent performance).

3.1. In the event of failures or refusal of subsequent performance the Customer can reduce the purchase price or after the setting and the fruitless expiry of a reasonable period withdraw from the contract, unless the defect is not insignificant or the goods have already been sold, processed or transformed.

3.2. The Customer shall be entitled to claim for damages in accordance with the provisions of Item VIII.

4.1. We shall bear expenses in connection with the subsequent performance only if they are reasonable in the individual case, in particular in relation to the remuneration for the service.

4.2. Expenses which are incurred as a result of the transfer of the goods to a place other than the place of performance shall not be refunded by us unless this corresponded to their use under the contract.

5.1. Claims by the Customer based on material defects shall be subject to the statute of limitations one year after delivery to the customer, even if they are used for a building structure, unless this manner of use had been agreed upon in writing.

5.2. In cases of subsequent performance, the period of limitation shall not start running again.

6. Claims by the Customer based on intentional and grossly negligent breach of duties on our part, in the case of fraudulent concealment of material defects or the assumption of a guarantee by us as well as the Customer's rights of recourse under Art. 478 of the German Civil Code (BGB), unless these go beyond the statutory claims based on material defects, shall remain unaffected by the above-mentioned provisions.

7. In cases of force majeure, we are released from our obligation to perform. Claims for damages are excluded.

VIII. Other liability

1. Irrespective of the limitations of liability in this section, we are liable in accordance with the statutory provisions for damage to life, body and health, which are based on a negligent or willful breach of duty by us, our legal representatives or our vicarious agents, as well as for damage arising from liability the Product Liability Act. For damages that are not covered by sentence 1, we are only liable for intent and gross negligence on our part,

our legal representative or our vicarious agents in accordance with the statutory provisions. In this case, the liability for damages is limited to the foreseeable, typically occurring damage, unless we, our legal representatives or our vicarious agents have acted intentionally.

2. We are also liable for damage that we cause through simple negligent breach of such contractual obligations, the fulfillment of which enables the proper execution of the contract in the first place, the breach of which jeopardizes the achievement of the purpose of the contract and on the compliance of which the customer regularly trusts and can trust. However, we are only liable if the damage is typically associated with the contract and is foreseeable.

3. Any further liability is excluded regardless of the legal nature of the asserted claim. Insofar as our liability is excluded or limited, this also applies to the personal liability of our employees, workers, employees, representatives and vicarious agents.

IX. Final provisions, applicable law, place of jurisdiction

1. Should individual provisions of these terms and conditions be or become invalid, void or contestable, the remaining conditions remain unaffected. In this case, the other regulations must be interpreted or supplemented in such a way that the intended contractual purpose is achieved as precisely as possible in a legally permissible manner.

2. German law applies to all business, including business abroad. The application of the UN agreement on sales contracts (CISG) is excluded.

3. If the requirements for a place of jurisdiction agreement according to § 38 of the Code of Civil Procedure are met, the place of jurisdiction for all claims of the contracting parties is Duisburg.