

General Terms and Conditions of Sale

Edgar Fuchs GmbH / Edgar Fuchs Service GmbH

Last amended January 1, 2002

1 – General - Scope

The terms and conditions delineated herein shall be the sole terms and conditions which apply to all current and future business transactions of Edgar Fuchs GmbH / Edgar Fuchs Service GmbH (“Supplier”); we do not accept any customer’s (“Customer”) terms and conditions of sale which conflict with or deviate from the terms and conditions delineated herein unless Supplier has expressly agreed to such terms and conditions. Our terms and conditions of sale shall apply even if we, having knowledge of any conflicts or deviations in Customer’s terms and conditions of sale, effect delivery to Customer without reservation. Any agreements to be entered into between Supplier and Customer in performance of this agreement shall be stipulated in writing hereunder.

2 – Offer - Documentation

If the offer qualifies as an offer as defined in § 145 of the BGB [Section 145 of the German Civil Code], Supplier has 4 weeks in which to accept the offer. Acceptance of the offer may be declared in writing or through delivery of the merchandise to Customer.

Any offers made by Supplier shall be without obligation and subject to change without notice, provided that nothing different has been specified in the order confirmation. Supplier reserves title and/or copyright to any illustrations/reproductions, drawings, cost estimates and other documentation. Without Supplier’s express written consent, Customer shall not make such illustrations/reproductions, drawings or other documentation available to third parties.

Any particulars contained in catalogues, drawings or descriptions, as well as any particulars regarding performance, dimension, weight, and/or color shall be approximations only, unless otherwise specified in a binding offer. Moreover, the foregoing shall be subject to any design and form modifications made by the manufacturer and any improvements of the merchandise during the delivery term, to the extent that Customer can be reasonably expected to accept those changes. Any deviations in dimension, content, weight, and/or color shall be permissible within the scope of normal trade practice.

For any special or custom-made constructions, the drawings released by Customer or its agent for the purpose of manufacture shall also apply.

3 – Prices - Payment Terms

To the extent not otherwise indicated in Supplier’s order confirmation, prices shall be “ex works”, packing excluded; packing shall be charged separately. Installation and assembly costs shall be included only if agreed upon separately. If, after entering into the contract, any price decreases or increases should occur, in particular as a result

of collective agreements and/or changes in material costs, Supplier reserves the right to change its prices accordingly.

The statutory VAT shall not be included in Supplier's prices. VAT shall be indicated separately in the amount applicable on the billing date.

Any discount to be deducted from the stated price shall require a separate written agreement.

Unless otherwise indicated on the order confirmation, the net purchase price shall become due and payable upon receipt of the invoice. In the event of a delay in payment, Supplier shall have the right to claim interest on payments in arrears in the amount of 8% p.a. above the then applicable base interest rate. If Customer is a private Customer, the interest rate on payments in arrears shall be 5% p.a. above the then applicable base interest rate. Upon proof of a greater damage suffered because of delayed payment, Supplier shall have the right to claim compensation therefor.

Customer shall be entitled to a set-off only if Customer's counterclaims have been recognized by declaratory judgment, are uncontested, or have been recognized by Supplier. In the case of disputed counterclaims Customer shall have no right of retention.

In the case of a notification of defects [*Mängelrüge*, see § 377 of HGB, German Commercial Code], Customer shall be entitled to withhold payments only if the payment withheld reasonably reflects the value of the defects claimed.

The cost of any logo shall be billed separately. Excess or short deliveries as customary in the trade shall be accepted by Customer.

§ 4 – Delivery

The delivery time as indicated by Supplier shall not commence until any and all technical issues have been clarified.

Supplier's compliance with its supply commitment shall be contingent upon Customer's due and timely fulfillment of obligations including, but not limited to submission of the entire documentation to be provided by Customer and payment of any agreed upon advance.

If Customer should default in taking delivery, or should Customer violate other participatory duties, Supplier shall have the right to claim compensation for the damage incurred and any additional expenses. Supplier reserves the right to assert further claims. To the extent that the preconditions specified in 3 are given, the risk of accidental loss or accidental deterioration of the merchandise sold shall pass to Customer at the time Customer has failed to accept Supplier's delivery [*Annahmeverzug* as defined in the BGB, German Civil Code], or is guilty of late performance as an obligor [*Schuldnerverzug* as defined in BGB]. Upon commencement of the agreed upon delivery time Supplier shall be entitled to effect delivery. If Customer, despite Supplier's offer, should be unable to or refuse to accept the merchandise, Supplier shall be entitled to store the merchandise on Supplier's premises, and to bill such merchandise for payment without delay. Supplier may bill separately any additional costs or expenses resulting therefrom, or any other costs and expenses resulting from the default in taking delivery.

In the event of a non-performance of the order for reasons that are attributable to Customer, 25% of the total order amount shall be deemed agreed upon as damages.

Customer reserves the right to prove that Supplier has not suffered any damage or has suffered a substantially lesser damage. Damages shall become due and payable without delay. This shall be without prejudice to Supplier's right to claim additional damages.

Defaults in delivery and/or performance due to force majeure and unforeseeable events which are not attributable to Supplier and which make it substantially more difficult or even impossible for Supplier to make deliveries, including, but not limited to strikes, lock-outs, interruptions of operations, actions of government agencies, delayed delivery of accessories, etc., including delayed deliveries to Supplier's suppliers or subcontractors, shall entitle Supplier to extend the delivery time by up to six weeks, even if a binding delivery time has been agreed upon. If the impairment lasts more than six weeks, Customer, after having granted a grace period of reasonable length, shall be entitled to withdraw from the contract.

Any claims for damages on the part of Customer, irrespective of the legal grounds, in particular claims based on the violation of duties arising out of the law of obligations (*Recht der Schuldverhältnisse*, BGB) and/or claims arising out of tort [*Unerlaubte Handlung*, BGB] shall be excluded. Supplier reserves the right to prove that Customer has not suffered any damage or has suffered a substantially lesser damage resulting from the delay in delivery.

To the extent that a transaction for delivery by a fixed date [*Fixhandelskauf* as defined in the HGB] has been agreed upon, Sections (7), (8) and (9) shall not apply. Reasonable partial deliveries shall be admissible and shall be billed subject to the payment terms agreed upon.

§ 5 – Assembly

At the start of assembly, all construction work must have progressed to a stage that will allow unimpeded assembly. Customer undertakes to provide for electricity, water, heating and lighting as well as for lockable rooms that are required for the storage of the delivered merchandise and the tools made available for the assembly. For the transport of heavy objects Customer shall provide staff and the required equipment and lifting gear. If the openings for transporting parts into the buildings are too small, any costs resulting therefrom including, but not limited to extension of the opening or disassembly of parts, as well as any time loss or down time shall be borne by Customer.

Any masonry, plaster, paint, carpentry, installation and electric supply work shall not be included in the offers. If Supplier needs to connect devices, Customer shall ensure that any necessary water, sewage, electricity and gas supplies on site reach such devices.

Supplier shall be liable only for the proper handling and installation and/or assembly of the merchandise delivered; there shall be no liability for the work of those people carrying out work for Supplier to the extent that such work is not related to the installation or assembly, or to the extent that such work was commissioned by Customer.

§ 6 – Passing of Risk - Packaging Cost

Unless otherwise agreed upon in the order confirmation, delivery shall be "ex works".

If Customer is a business Customer, the risk of accidental loss or accidental deterioration of the merchandise sold shall pass to Customer upon transfer of the merchandise; in the event of delivery, at Customer's request, to a place other than the place of performance, such risk shall pass to Customer with the delivery of the merchandise to the forwarding agent, carrier, or any other persons or establishment commissioned with the shipping. If Customer is a private Customer, even in the case of delivery to a place other than the place of performance, such risk shall not pass to Customer before transfer of the merchandise to Customer.

Any packaging material returned to Supplier's place of business after delivery shall be taken back without charge. If Customer so desires, Supplier shall take out a transport insurance policy at Customer's expense.

§ 7 – Warranty against Defects

A warranty against defects shall apply only if the cause of the defect already existed at the time the risk passed to Customer. For business Customers, Supplier shall warrant against defects that are attributable to Supplier, either by rectifying the defect or by delivering substitute merchandise, at Supplier's discretion. In the case of rectification of the defect, Supplier shall not bear any expenses in excess of the purchase price. If the business Customer has moved the delivered merchandise, contrary to its intended use, to a location other than the permanent residence or place of business, the Customer shall bear the additional costs for the rectification of defects resulting therefrom.

Private Customers may choose whether subsequent performance shall be through rectification of defects or delivery of substitute merchandise. However, Supplier shall be entitled to refuse the type of subsequent performance chosen by the Customer if such performance is possible only at disproportionate costs and the alternative subsequent performance would not entail considerable disadvantage for the Customer.

If Supplier fails to accomplish its obligation of subsequent performance, Customer shall be entitled to withdraw from the contract or to claim a reduction of the purchase price. In the event of minor breaches of contract, especially in the case of only minor defects, Customer shall not be entitled to withdraw from the contract. To the extent that the merchandise fails to fulfill a warranty for specific characteristics (*Beschaffenheitsgarantie* within the meaning of German law), Supplier shall be liable in accordance with the statutory provisions.

Further, Supplier shall be liable in accordance with the statutory provisions if Customer asserts a claim for damages arising from intent or gross negligence, and/or a claim for damages arising from injury to life, body or health which is based on intent or negligence. Unless Supplier is culpable of intentional breach of contract or has culpably violated a material contractual obligation, liability for damages shall be limited to typical damage that was reasonably foreseeable.

For all other purposes, any liability for damages shall be excluded. The limitation of liability set forth in Section 7, paragraphs 4 und 5, does not apply to private consumers.

Any warranty claims by business Customers shall be subject to the precondition that Customer has duly complied with his duty to examine and with the requirement to make a complaint about a defect immediately on receipt of the merchandise

(*Untersuchungs- und Rügepflichten*, see § 377 of HGB).

The warranty period shall be one year for business Customers, and two years for private Customers, extending from delivery of the merchandise. For objects which have been used in a building project in accordance with their customary use and which have caused the completed project to be defective, the warranty period shall be five years. Such warranty period shall be a limitation period.

Private Customers' warranty period for used goods shall be one year. For all other purposes there shall be no warranty for used goods.

Merchandise sold to business Customers shall always be in the condition specified in the manufacturer's product description. Within the framework of this contract, any public statements, recommendations or advertising on the part of the manufacturer shall not be construed to describe the condition of the merchandise.

Customer shall not be given a guaranty within the meaning of a *Garantie* (§ 443, German Civil Code), i.e. no voluntary promise/pledge on the part of the Supplier beyond the statutory warranty provisions; this shall not affect any manufacturer's warranty. Any warranty claims against manufacturers, suppliers or other third parties that Supplier is entitled to shall be deemed assigned to Customer. In the event that Supplier received a warranty card, the conditions of such warranty card shall apply.

Only Customer shall be entitled to warranty claims against Supplier, and such claims shall not be assignable.

§ 8 – Total Liability

Any liability for damages beyond that stipulated in Section 6, irrespective of the legal nature of the asserted claim, shall be excluded.

To the extent that liability is compulsory because of the provisions stipulated in the Product Liability Act, such liability shall remain unaffected. To the extent that Supplier's liability for damages is excluded or limited, this shall also apply to any personal liability for damages by our employees, workers, staff, representatives and agents.

§ 9 – Retention of Title (ROT)

In dealings with business Customers, Supplier retains title to the merchandise until any and all payments owed by Customer in the course of the business relationship have been received.

In dealings with private Customers, Supplier retains title to the merchandise until full payment of the purchase price has been received.

In the event Customer does not fulfill the terms of the contract including, but not limited to delayed payment, Supplier shall have the right to withdraw from the contract or to reclaim the ROT merchandise without notice. Taking back the ROT merchandise shall not constitute a withdrawal from the contract unless expressly declared by Supplier in writing. Attachment of the ROT merchandise shall always constitute a withdrawal from the contract. After taking back the ROT merchandise, Supplier shall be entitled to exploit such merchandise; any proceeds therefrom shall be credited against Customer's liabilities, allowing for reasonable expenses incurred. Customer undertakes to compensate Supplier for the difference between the value of

the merchandise when new and the reduced market value resulting from the use of the merchandise.

Customer undertakes to handle the ROT merchandise with care; in particular, Customer shall take out sufficient insurance cover for such merchandise against the risk of fire, water and/or theft, at Customer's expense and based on the value of the merchandise when new. Any maintenance and inspection work shall be at Customer's expense.

In the event of attachments or other actions of third parties, Customer shall notify Supplier in writing without delay so that Supplier may bring an action pursuant to § 771 of ZPO [German Code of Civil Procedure]. To the extent that the third party is unable to reimburse Supplier for the judicial and extra-judicial costs of an action pursuant to § 771 of ZPO, Customer shall be liable for the loss incurred by Supplier.

Customer shall be entitled to sell the ROT merchandise in the ordinary course of business; however, Customer agrees to assign to Supplier any receivables, in the amount of the total invoice value including VAT of Supplier's claim, that have accrued to Customer from the resale of such merchandise to a purchaser or a third party. This shall be independent of whether or not the merchandise was resold after processing. Even after such assignment Customer shall have the right to collect such receivables until such right is revoked. This shall be without prejudice to Supplier's right to collect such receivables itself. However, Supplier undertakes not to collect such receivables as long as Customer fulfills its payment obligations from the proceeds received and Customer's account is not in arrears and especially as long as there are no bankruptcy, composition, or insolvency procedures pending against Customer, and as long as there has been no cessation of payments. In the event of Customer default due to the above, Customer agrees to give Supplier detailed information about the assigned receivables, to provide Supplier with any documents necessary for collection and to inform the affected parties of the assignment.

Any processing or transformation [*Verarbeitung, Umbildung*, see § 950 of BGB] of the ROT merchandise by Customer shall be at no cost to Supplier. If such merchandise is processed with other objects not owned by Supplier, Supplier shall acquire joint title to the resulting product in the ratio of the value of the ROT merchandise (total invoice value) to the other processed objects at the time the processing occurred. For all other purposes, the same shall apply to the product resulting from processing as applied to the original ROT merchandise. If ROT merchandise is inseparably mingled or intermixed or combined [*Vermischung*, see § 948 BGB] with other objects not owned by Supplier, Supplier shall acquire joint title to the resulting product in the ratio of the value of the ROT merchandise (total invoice value) to the other mingled/intermixed/combined objects at the time the mingling/intermixing/combining occurred. If mingling/intermixing/the combination occurs in a way that the Customer's object is to be regarded as the principal thing, it shall be deemed agreed that Customer transfer co-ownership thereof to Supplier on a pro rata basis. Customer shall hold the ownership or co-ownership so arisen in custody for Supplier.

Customer shall assign to Supplier any claims against a third party that would arise in the event that ROT merchandise is joined to a piece of land (*Verbindung*, see § 946 BGB).

Supplier undertakes to release, upon Customer's request, any collateral granted to Supplier to the extent that the realizable value of the collateral exceeds the claims by more than 10%; the selection of the collateral to be released shall be at Supplier's

discretion.

§ 10 – Customer Service

For any customer service transaction, the rates applicable on the date the service is rendered shall be deemed agreed upon. If, during a customer service transaction, delivery of merchandise should also occur, the lump sum travel costs shall nevertheless be charged. Any bills for customer service transactions are deemed craftsmen's services and shall thus be payable promptly and without deduction.

§ 11 - General

Customer agrees that Supplier will store personal data of Customer obtained in the course of the business relationship. Further, Customer agrees and is aware that Supplier will digitalize legally relevant declarations and will not store hard copies thereof.

The storage of personal data shall be subject to compliance with the applicable data protection laws. The special provisions thereof that apply to merchants [*Kaufleute* as defined in the HGB] shall equally apply to public corporations and Federal Special Funds.

If, in transactions with Customer, it has been agreed that VOB/B [contracting rules for award of public works contracts] or VOL/B [general terms of contract for the provision of supplies and services] shall apply, the Supplier's General Terms and Conditions of sale shall apply only to the extent that the VOB/B or VOL/B applicable at the time the contract is entered into does not provide otherwise. Any changes of ownership, legal form of a company, or any other events that affect the economic circumstances, as well as any address changes shall be made known to Supplier without delay.

§ 12 – Venue - Place of Performance

For merchants who have been entered in the Commercial Register [*Vollkaufmann* as defined in the HGB], venue shall be Supplier's principal place of business; however, Supplier shall have the right to sue Customer at Customer's permanent residence. To the extent not otherwise stipulated in the order confirmation, the place of performance shall be Supplier's principal place of business.

§ 13 – Severability

If any provision of these General Terms and Conditions of Sale should be invalid, this shall affect neither the validity of the remaining provisions nor that of the entire contract. A valid provision that comes as close as possible to the invalid provision shall apply instead.

Edgar Fuchs GmbH/Edgar Fuchs OHG/Edgar Fuchs Service GmbH