

General Terms and Conditions

Femotech GmbH

§ 1 Scope of application

(1) These General Terms and Conditions apply exclusively to entrepreneurs, legal entities under public law or special funds under public law within the meaning of Section 310 (1) of the German Civil Code (BGB). We shall only recognize terms and conditions of the customer that conflict with or deviate from our General Terms and Conditions if we expressly agree to their validity in writing.

(2) These General Terms and Conditions shall also apply to all future transactions with the customer, insofar as they are legal transactions of a related nature.

§ 2 Offer and conclusion of contract

(1) Our offers are always subject to change and non-binding.

(2) A contract shall only come into effect upon our written order confirmation and shall be governed exclusively by the content of the order confirmation.

(3) Amendments and changes must be made in writing to be effective.

(4) If an order is to be regarded as an offer in accordance with § 145 BGB, we can accept it within two weeks.

§ 3 Documents provided and confidentiality

(1) We reserve the property rights and copyrights to all documents provided to the customer in connection with the placing of the order, such as illustrations, drawings, technical documents, samples, etc.. These documents may not be made accessible to third parties unless we give the orderer our express written consent. If we do not accept the customer's offer within the period specified in § 2, these documents must be returned to us immediately.

(2) The customer is obliged to keep confidential all business, operational, and technical information that becomes known to him in connection with our services, even beyond the duration of the contract.

§ 4 Prices and payment

(1) Unless otherwise agreed in writing, our prices are in EURO (€) with delivery ex works (EXW according to Incoterms 2020) excluding packaging, freight, insurance, customs duties, fees, other public charges and plus VAT at the applicable rate.

(2) Payments must always be made by bank transfer, free of charge for us. The risk and costs of the payment transaction shall be borne by the customer.

(3) Unless otherwise agreed, the purchase price must be paid within 30 days of the invoice date without deduction.

(4) Payments are considered to be made only when we can dispose of the invoice amount in one of our accounts.

(5) If a payment deadline is exceeded, interest of 8% above the base interest rate shall be owed without prejudice to all further claims and rights. We reserve the right to claim higher damages for default.

(6) Unless a fixed price agreement has been made, we reserve the right to make reasonable price changes due to changes in labor, material and distribution costs for deliveries made 3 months or more after conclusion of the contract.

§ 5 Offsetting and rights of retention

The customer shall only be entitled to set-off if his counterclaims have been legally established or are undisputed. The customer is only authorized to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.

§ 6 Deliveries and delivery times

(1) Unless otherwise agreed, we deliver ex works, Mittenaar (EXW according to Incoterms 2020).

(2) Delivery dates or deadlines, which can be agreed as binding or non-binding, must be in writing.

(3) If additional or extension orders are placed at a later date, the delivery time shall be extended accordingly.

(4) We are entitled to make partial deliveries and render partial services at any time.

(5) We reserve the right to deliver up to 10% more or less of the ordered goods.

(6) The commencement of the delivery time stated by us presupposes the timely and proper fulfillment of the customer's obligations. We reserve the right to (Einrede) plead non-performance of the contract.

(7) If the customer is in default of acceptance or culpably violates other obligations to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. We reserve the right to assert further claims. If the above conditions are met, the risk of accidental loss or accidental deterioration of the purchased item shall pass to the customer at the point in time at which the customer is in default of acceptance or debtor's delay.

(8) In the event of a delay in delivery, we shall be liable in accordance with the statutory provisions of German law, insofar as the delay is due to an intentional or grossly negligent breach of duty for which we are responsible, for each completed week of delay within the scope of a lump-sum compensation for delay in the amount of 0.5% of the delivery value, but not more than 5% of the delivery value.

(9) Further statutory claims and rights of the customer due to a delay in delivery remain unaffected.

(10) If delivery is delayed in whole or in part due to circumstances for which we are not responsible, in particular in the event of force majeure such as war, acts of terrorism, riots or similar events, traffic disruptions, strikes, lockouts, operational disruptions, material shortages or other unavoidable events, we shall be entitled to extend the delivery periods appropriately, even in the case of bindingly agreed deadlines and dates. If the obstacles to delivery last longer than 3 months, we are entitled to withdraw from the contract in part or in full.

§ 7 Transfer of risk on dispatch

(1) If the goods are dispatched to the customer at the customer's request, the risk of accidental loss or accidental deterioration of the goods shall pass to the customer when the goods are dispatched to the customer, at the latest when they leave the factory/warehouse. This shall apply irrespective of whether the goods are dispatched from the place of performance or who bears the freight costs.

(2) If dispatch is delayed due to the fault of the customer, the risk shall pass to the customer from the day of readiness for dispatch and after the corresponding notification to the customer at this moment.

§ 8 Retention of title

(1) We reserve title to the delivered goods until all claims arising from the delivery contract have been paid in full. This shall also apply to all future deliveries, even if we do not always expressly refer to this. We are entitled to take back the purchased item if the customer acts in breach of contract.

(2) The customer is obliged to treat the purchased item with care as long as ownership has not yet been transferred to him.

(3) As long as ownership has not yet been transferred, the customer must inform us immediately in writing if the delivered item is seized or exposed to other interventions by third parties. At the same time, the customer shall inform the third party of our retention of title. If the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO (German Code of Civil Procedure), the customer shall be liable for the loss incurred by us.

(4) The customer is entitled to resell the reserved goods in the normal course of business. The customer hereby assigns to us the claims of the purchaser from the resale of the reserved goods in the amount of the final invoice amount agreed with us (including VAT). This assignment shall apply irrespective of whether the purchased item has been resold without or after processing. The customer shall remain authorized to collect the claim even after the assignment. Our authorization to collect the claim ourselves remains unaffected. However, we shall not collect the claim as long as the customer meets his payment obligations from the proceeds received, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed and payments have not been suspended.

(5) The treatment and processing or transformation of the purchased item by the customer shall always be carried out in our name and on our behalf. In this case, the expectant right of the customer to the purchased item shall continue in the transformed item. If the purchased item is processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the objective value of our purchased item to the other processed items at the time of processing. The same applies in the event of mixing. If the mixing takes place in such a way that the customer's item is to be regarded as the main item, it is agreed that the customer shall transfer proportional co-ownership to us and shall keep the sole ownership or co-ownership thus created for us. To secure our claims against the customer (buyer), the customer shall also assign to us such claims which accrue to him against a third party through the combination of the reserved goods with a property; we hereby accept this assignment.

(6) We undertake to release the securities to which we are entitled at the request of the customer if their value exceeds the claims to be secured by more than 10%.

§ 9 Warranty and notification of defects as well as recourse / manufacturer recourse

(1) Warranty rights of the customer presuppose that he has properly fulfilled his obligations to inspect and give notice of defects in accordance with § 377 HGB (German Commercial Code).

(2) Claims for defects shall become time-barred 12 months after delivery of the goods supplied by us to our customer. The above provisions shall not apply insofar as the law prescribes longer periods in accordance with § 438 para. 1 no. 2 BGB (buildings and items for buildings), § 479 para. 1 BGB (right of recourse) and § 634a para. 1 BGB (building defects). Our consent must be obtained prior to any return of the goods.

(3) After transfer of risk or acceptance of the product, the customer must inspect it immediately for its functionality and report any defects found immediately, at the latest within a period of 10 days, in writing in a comprehensible form. The customer is obliged to provide us with all information and documents that are necessary for the determination of defects. If no defect can be determined by our inspection, the customer shall bear the costs of the inspection.

(4) If, despite all due care, the delivered goods have a defect that already existed at the time of the transfer of risk, we shall, at our discretion, either repair the goods or deliver replacement goods, provided that notice of defects is given in due time. We must always be given the opportunity for subsequent performance within a reasonable period of time. Recourse claims shall remain unaffected by the above provision without restriction.

(5) If the subsequent performance fails, the customer may - without prejudice to any claims for damages - withdraw from the contract or reduce the remuneration in reasonable proportion to the material defects that have occurred.

(6) Defect claims shall not exist in the case of only insignificant deviation from the agreed quality, in the case of only insignificant impairment of usability, in the case of natural wear and tear, or in the case of damage arising after the transfer of risk as a result of incorrect or negligent handling, excessive strain, unsuitable equipment or due to special external influences which are not assumed under the contract. If improper repair work or modifications are carried out by the customer or third parties, no claims for defects shall exist for these and the resulting consequences.

(7) Claims of the customer for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labor and material costs, are excluded insofar as the expenses increase because the goods delivered by us have subsequently been moved to a location other than the customer's branch office, unless the transfer corresponds to their intended use.

(8) Recourse claims of the purchaser against us shall only exist insofar as the purchaser has not made any agreements with his customer that go beyond the legally mandatory claims for defects. Paragraph 7 shall also apply accordingly to the scope of the customer's right of recourse against the supplier.

§ 10 Liability and compensation

(1) Liability for damages, regardless of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations and tort, is limited in accordance with this clause §10, insofar as fault is involved.

(2) We shall not be liable in the event of simple negligence on the part of our executive bodies, legal representatives, employees or other vicarious agents, insofar as this does not involve a breach of material contractual obligations. A material contractual obligation is one on which the customer relies and may rely. Essential to the contract is, for example, the obligation to deliver the goods free from essential defects in good time, as well as duties to protect or advise which are intended to enable the customer to use the goods in accordance with the contract or which are intended to protect the life and limb of the customer's personnel.

(3) Insofar as we are liable for damages on the merits in accordance with the above clause, this liability is limited to damages which we foresaw as a possible consequence of a breach of contract when the contract was concluded or which we should have foreseen if we had exercised due care. Indirect damage and consequential damage resulting from defects in the delivery item are also only eligible for compensation if such damage is typically to be expected when the delivery item is used as intended.

(4) The above limitations do not apply to liability for willful conduct, for guaranteed characteristics, for injury to life, limb or health and under the Product Liability Act.

§ 11 Miscellaneous

(1) This contract and all legal relationships between the parties are subject to the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

(2) The place of performance and exclusive place of jurisdiction for all disputes arising from this contract is our registered office, unless otherwise stated in the order confirmation.

(3) Should individual provisions of this contract be or become invalid or contain a loophole, the remaining provisions shall remain unaffected. The parties undertake to replace the invalid provision with a legally permissible provision that comes closest to the economic purpose of the invalid provision or fills the gap.

(4) The customer hereby agrees that the customer data received in connection with the business relationship may be stored for the purpose of data processing and transmitted to third parties to the extent necessary for the fulfillment of the contract.

(5) If we are obliged to supply the delivery item in accordance with the customer's specifications (models, samples, sketches), the customer shall be responsible for ensuring that the industrial property rights of third parties are not infringed as a result. In the event of a culpable breach of duty, the customer is obliged to release us from any third-party claims.