

# General Terms and Conditions of Sale

05/2015

## § 1 General

- (1) All services, supplies and deliveries of Fäth GmbH, Eschau-Hobbach, Germany, shall be subject to these General Conditions of Sale. Separate agreements, if acknowledged by Fäth GmbH in writing, shall prevail to these General Conditions of Sale.
- (2) Any general terms and conditions of the customer that vary or conflict with these General Conditions of Sale are hereby objected to and rejected by Fäth GmbH and shall not become part of the contract neither by acceptance of the order nor by absence of a separate objection, unless they are acknowledged by Fäth GmbH in writing. This shall apply disregarding the chronological order of the issuance of these General Conditions of Sale and general terms and conditions of the customer. Any terms and conditions of the customer that constitute an acceptance of his general terms and conditions without subsequent written acknowledgement of Fäth GmbH are hereby explicitly objected to and rejected by Fäth GmbH.
- (3) Offerings of Fäth GmbH are non-binding. Subject to a separate agreement in writing, a contract shall be concluded when Fäth GmbH issues its order confirmation in textform. Despite the written form a transmission of the order confirmation by fax or by electronic copy via email is regarded to be in textform.
- (4) If customary trade clauses are agreed, the rules on interpretation of them as defined in the latest version of Incoterms shall apply, unless otherwise specified in the following.
- (5) Documentation accompanying our quotes, such as illustrations and drawings, as well as weight and dimension data, is only to be seen as approximations, unless they are expressly designated as binding.
- (6) Fäth GmbH hereby reserves property rights and copyrights on any samples, patterns, drawings, cost estimates, calculations and similar information in a tangible or intangible manner, including in electronic form. This information shall not be reproduced or disclosed to a third party without the consent of Fäth GmbH. The customer shall make documents designated as confidential by Fäth GmbH available to a third party only with the consent of Fäth GmbH.

## § 2 Prices and Payment

- (1) Prices are ex works. Any applicable sales tax (value added tax, VAT) or any tax similar to sales tax (abroad), freight charges and duties must be added to the prices agreed for services and supplies of Fäth GmbH. This also applies to lump sum prices.
- (2) Subject to separate stipulations in the order confirmation, payments shall be due net (without deduction) within 30 days of the invoice date. The statutory provisions regarding a default in payment shall apply.
- (3) The customer shall be entitled to offset his counterclaims only if they have been ruled on finally and conclusively, are not disputed or have been acknowledged by Fäth GmbH. In addition, the customer shall be authorized to exercise a right of retention only insofar as his counterclaim is founded on the same contractual relationship.
- (4) If deliveries and services are not to be provided or delivered within four months after conclusion of the contract, Fäth GmbH reserves the right to adjust the prices to the labour and material costs effective at the time of service provision or delivery unless a fixed price has expressly been agreed for the duration of the contract. Cheques and bills of exchange shall only be accepted on account of performance.
- (5) If mayor elements of the calculation basis, especially existing collective labour agreements, cost of materials etc. change, then Fäth GmbH shall be allowed to adjust the price of future deliveries and services accordingly. However, this right may be executed not before one year after the conclusion of the contract.

## § 3 Delivery Period/Time of Performance, Delay in Delivery

- (1) The delivery period/time of performance shall be as agreed by the parties. The agreed period/time shall become significant in terms of the contract if the parties have expressly agreed to this. To allow it to commence and to be observed by Fäth GmbH, all commercial and technical questions must first be clarified and the customer must have fulfilled all his obligations, such as furnishing of the necessary official certificates or approvals or making of a down-payment. If this is not the case, the delivery period/time of performance shall be extended commensurately. This shall not apply if Fäth GmbH is responsible for the delay .
- (2) If an acceptance of the customer is contractually required, the contractually specified acceptance deadline, or alternatively the time at which notification of readiness for acceptance is given, shall be mandatory for the compliance of Fäth GmbH with the delivery period/time of performance, except in the case where the customer justifiably refuses acceptance.

# General Terms and Conditions of Sale

05/2015

- (3) If shipment or acceptance of the service or supply is delayed for reasons for which the customer is responsible or if the customer culpably violates other duties of cooperation on his part, Fäth GmbH shall be authorized to demand compensation for the damage he has incurred in this regard, including any additional expenses. Without prejudice to further claims, Fäth GmbH can otherwise dispose of the article to be supplied after he has set a reasonable period of grace and this has expired without remedy, in particular store the article to be supplied at the risk and expense of the customer and/or supply the customer within a reasonably extended period of time.
- (4) If the failure of Fäth GmbH to comply with the delivery period/time of performance is due to force majeure, such as natural disasters, epidemics, war, armed conflicts, civil war, revolution, terrorism, sabotage, nuclear/reactor accidents, labour disputes or other events that are outside of the control of Fäth GmbH, Fäth GmbH shall be discharged from his performance obligations for the duration of the event and the delivery period shall be extended appropriately. Fäth GmbH shall inform the customer of when such circumstances start and end as soon as possible. If the event lasts for more than 6 months, Fäth GmbH shall also be authorized to terminate the contract.
- (5) If Fäth GmbH is in default and the customer incurs damage as a result, the latter shall be authorized to demand lump-sum compensation for the damage due to such delay. This shall be 0.5% of the value of that part of the overall delivery that cannot be used on time or in accordance with the contract as a result of the delay, for each full week of the delay but a maximum total amount of 5% of said value. If Fäth GmbH is in delay and the customer grants him a reasonable period of time to perform his obligation – taking into account the statutory exceptions – and if this period of time is not observed for reasons for which Fäth GmbH is responsible, the customer shall be authorized to rescind the contract within the framework of the statutory provisions.

Further claims from default in delivery are solely and exclusively determined in accordance with section 7 of these conditions of sale.

## § 4 Transfer of Risk, Acceptance, Packaging

- (1) Delivery of services shall be at the customer's risk from the moment the service provision/delivery is completed. Regarding the delivery of goods, the delivery items shall be at the customer's risk from the moment loading has started at the factory of Fäth GmbH, in fact also in case of partial deliveries or if Fäth GmbH has assumed ancillary obligations such as dispatch or delivery and installation.
- (2) If acceptance has been agreed, this must be conducted immediately at the agreed time, alternatively after Fäth GmbH has given notification that the object is ready for acceptance. The customer shall not be entitled to refuse acceptance due to an insignificant defect, provided Fäth GmbH acknowledges its obligation to remedy the defect.
- (3) If shipment or acceptance is delayed or not performed due to circumstances not attributable to Fäth GmbH, the risk of accidental loss or accidental destruction of the article to be supplied shall pass to the customer from the day on which notice is given of its readiness for shipment or acceptance. Fäth GmbH shall be obliged to take out insurance requested by the customer in writing, such as transport insurance, at the expense of the customer.
- (4) Partial deliveries are permitted as far as this is reasonable for the customer.
- (5) Transport packaging and other packaging according to the German Packaging Directive will not be taken back with the exception of wooden pallets. The customer is liable for the disposal of packaging at its own expense.

## § 5 Retention of Title

- (1) Fäth GmbH hereby reserves the legal right of ownership of the delivery or services until all claims have been settled, in particular respective any outstanding balance from a current account to which Fäth GmbH is entitled as part of the business relationship with the customer (overall retention of title).
- (2) The customer shall be obliged to treat the delivery or services subject to retention of title (conditional goods) carefully; in particular, he shall be obliged at his own expense to insure it adequately against theft, breakage, fire, water and other damage at the reinstatement value. Fäth GmbH shall be authorised to take out his insurance at the expense of the customer if the customer has demonstrably not taken it out.
- (3) If the conditional goods are combined with other objects in such a way that the conditional goods become an integral part of a single, new object, Fäth GmbH shall obtain co-ownership of the other object. If a new object is produced by combining or processing of the conditional goods, Fäth GmbH shall always acquire a corresponding right of co-ownership.

# General Terms and Conditions of Sale

05/2015

- (4) The customer shall be authorized to resell the retained goods in the normal course of business. If the retained goods that have been supplied or produced in accordance with Section 5.3 are sold, the customer hereby assigns the claims against his customer from the sale (total sum invoiced including value-added tax) or a corresponding part thereof, along with all secondary rights, to Fäth GmbH until the latter's claims have been settled in full.
- (5) The customer shall remain authorized to collect the claim assigned pursuant to Section 5.4; Fäth GmbH's authorization to collect the claim itself shall remain unaffected thereby. Fäth GmbH shall not collect the claim as long as the customer meets his payment obligations from the collected amounts, is not in arrears with payment or has not discontinued payment, and an application for instigation of insolvency or composition proceedings has not been filed against the customer.  
If one of the above situations applies, Fäth GmbH can demand that the customer discloses the claims assigned to Fäth GmbH as security and provides all details required to collect them.
- (6) If the customer acts in breach of contract, in particular if he is in arrears with payment, Fäth GmbH shall be authorised to take back the deliveries or services after issuing a warning. This, like any levy of execution on the deliveries or services by Fäth GmbH, shall not constitute a rescission of the contract by Fäth GmbH.

## § 6 Warranty

Fäth GmbH shall be liable for material defects and defects of title to the exclusion of further claims – subject to Section 7 – as follows:

### (1) Material Defects

- (1.01) Details given by Fäth GmbH about the properties of the deliveries or services to be supplied are the result of his measurements and calculations and shall be the article's agreed nature, but not its warranted qualities or guarantees within the meaning of Section 443 of the German Civil Code (BGB). Deviations customary in trade or commerce and deviations due to legal provisions or deviations representing technical improvements as well as replacing parts with equivalent parts are permitted as long as they do not prejudice the use of the deliveries and services as stipulated in the contract.
- (1.02) The customer can assert claims due to a material defect of the deliveries or services only if he has properly fulfilled his obligations to examine the supplied article and to give notice of defects in accordance with Section 377 of the German Commercial Code (HGB).
- (1.03) All parts that prove to be defective as a result of circumstances before the passage of risk shall, at the discretion of Fäth GmbH, be repaired or resupplied free of charge. Such defects shall be reported to Fäth GmbH in writing as soon as they are discovered. Replaced parts shall become the property of Fäth GmbH.
- (1.04) Fäth GmbH's liability for defects in essential third-party products shall be limited to assignment of the claim for defects of Fäth GmbH against his supplier. If the assigned claims for defects are not settled, the claims of the customer against Fäth GmbH due to defects shall be revived.
- (1.05) The customer shall grant Fäth GmbH the time and opportunity required for performing any rectification and replacement supplies that Fäth GmbH deems necessary; if the customer fails to grant sufficient time and opportunity, Fäth GmbH will not be liable for any consequences resulting from such failure. The customer shall have the right to rectify the defect himself or have it rectified by a third party and demand compensation for his necessary expenses from Fäth GmbH only in urgent cases of risk to safety or to avert disproportionately great damage; Fäth GmbH shall be informed immediately thereof.
- (1.06) Of the direct costs incurred as a result of repair or delivery of a replacement, Fäth GmbH shall – provided the complaint proves to be justified – bear the costs of the replacement item, including the cost of shipping it to the place of performance. Fäth GmbH shall also bear the reasonable costs of removing the defective part supplied and the costs of installing the replacement item, if installation of the part that later became defective was originally part of the contract. If it can be reasonably demanded in the individual case, Fäth GmbH shall also bear the costs of providing any necessary fitters and assistants, provided these costs are not increased due to the fact that the supplied article has been moved to a place other than the place of performance.
- (1.07) Within the framework of the statutory provisions, the customer shall have the right to rescind the contract if Fäth GmbH – taking into account the statutory exceptions – fails to remedy a defect by a reasonable period of time set for him to repair the article or supply a replacement. If the defect is only insignificant, the customer shall merely have a right to a reduction in the contractual price.

# General Terms and Conditions of Sale

05/2015

- (1.08) Fäth GmbH shall not be liable for defects that are attributable to measures or designs expressly demanded by the customer or that occur in materials or products which have been provided by the customer or whose use the customer has expressly demanded contrary to Fäth GmbH's advice.

In particular, no liability shall be assumed in the following cases:

Unsuitable or improper use or incorrect installation or commissioning by the customer or a third party, failure to use original parts and materials, normal wear and tear, incorrect or negligent handling, improper maintenance, unsuitable operating supplies, faulty construction work, unsuitable subsoil, failure to back up or inadequate backing up of data by the customer; failure to check or inadequate checking of programs and data for computer viruses (as defined in Section 9.3) by the customer, unusual effects of any kind (e.g. vibrations from other assemblies, ingress of foreign matter), chemical, electrochemical or electrical influences – unless Fäth GmbH is to blame for them.

- (1.09) If the customer or a third party carries out repairs improperly, Fäth GmbH shall not be liable for the resulting consequences.

The same shall apply to changes to the supplied deliveries or services that have been made without the prior consent of Fäth GmbH.

- (1.10) The customer shall be obliged to return the defective part to Fäth GmbH at the request of Fäth GmbH.

- (1.11) Subject to Section 8.2, the above warranty provisions shall apply accordingly to rectification of defects.

## (2) Defects of Title

- (2.01) If use of the supplied deliveries or services results in the infringement of industry property rights or copyrights in Germany, Fäth GmbH shall in principle and at his own expense obtain the right for the customer to continue using it or modify the supplied article in a way that the customer can reasonably be expected to accept so that the property right is no longer infringed.

If this is not economically feasible or not possible within a reasonable period of time, the customer shall be authorized to rescind the contract. If said conditions exist, Fäth GmbH shall also have the right to rescind the contract.

Moreover, Fäth GmbH shall – if it is to blame – indemnify the customer against claims of the owner of the property rights that are undisputed or have been ruled on finally and conclusively.

- (2.02) Fäth GmbH does not warrant that the end products manufactured on the supplied deliveries or services, including the manufacturing process used, are free of third-party property rights.

## § 7 Liability

- (1) If the supplied deliveries or services cannot be used by the customer in accordance with the contract because Fäth GmbH is to blame for failure to implement or inadequate implementation of suggestions and advice provided before or after conclusion of the contract or for violation of other additional contractual obligations – in particular the obligation to provide instructions on the use of and maintenance of the supplied deliveries or services – the provision of Section 6 and 7.2 shall apply accordingly, to the exclusion of further claims by the customer.

- (2) Fäth GmbH shall be liable for damages not caused to the supplied deliveries or services itself – on whatever legal grounds – only

- if Fäth GmbH has acted with intent,
- if Fäth GmbH's owner/management bodies or executive employees have been grossly negligent,
  - in the event of culpably injury to life, body or health,
  - - in case of defects Fäth GmbH has concealed with intent to deceive or if Fäth GmbH has warranted qualities of the object,
- in case of defects to the supplied deliveries or services, provided the contract is liable for injury to persons or damage to privately used articles pursuant to the German Product Liability Law.

If Fäth GmbH culpably violates cardinal contractual obligations, Fäth GmbH shall be liable (i) even in the case of gross negligence by non-executive employees and (ii) in the case of slight negligence, with liability in the latter case being limited to damage that could reasonably be foreseen and is typical of the contract. Cardinal contractual obligations are those that have to be met to enable proper fulfilment of the contract and which the customer can normally rely on being observed.

# General Terms and Conditions of Sale

05/2015

- (3) Further claims for damages – on whatever legal grounds – shall be excluded. If liability for damages on the part of Fäth GmbH is excluded or limited, this shall also apply to personal liability for damages on the part of Fäth GmbH's employees.

## § 8 Limitation of Claims

- (1) All claims of the customer – on whatever legal grounds – shall become statute-barred in 12 months. The beginning of statutory limitation is determined by law. However, warranty claims shall be time-barred after 12 months from putting into operation, but not later than 15 months from the date of delivery. The statutory periods of limitation shall apply to intent or intent to deceive, culpable injury to life, body or health and claims under the German Product Liability Law. They shall also apply to defects in a building or on supplied deliveries or services that have been used for a building in accordance with their customary usage and have caused the defect in the building.
- (2) If, as part of rectification of a defect, the customer obtains new rights in relation to defects, all claims shall become statute-barred at the latest 24 months from when the original part was supplied.
- (3) In no event shall Fäth GmbH be liable for anticipated or lost profits or for special, punitive, indirect, incidental or consequential damages. Fäth GmbH's total liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from the deliveries or services of Fäth GmbH or in connection with the underlying legal agreements or from the performance or breach thereof shall in no case exceed the overall price allocable to the deliveries or services or unit thereof which give rise to the claim. Fäth GmbH explicitly rejects, and shall not be liable for, any cancellation charges, late fees, penalties or liquidated damages.

## § 9 Use of Software

- (1) If software is supplied, the customer shall be granted a non-exclusive right to use it and its documentation. It shall be provided for use on the intended delivery or service supplied. The software shall not be used on more than one system.
- (2) The customer shall reproduce, revise, compile or translate the software or convert it from object code to source code only to the extent permitted by law (Sections 69 a et seq. of the German Copyright Law [UrhG]). The customer undertakes not to remove manufacturer's data – in particular copyright notices – or to change them without Fäth GmbH's prior written consent.  
All other rights to the software and documentation, including copies thereof, shall remain with Fäth GmbH or the software supplier. Sublicensing of it shall not be permitted.
- (3) Before providing the software to the customer, Fäth GmbH shall use state-of-the-art, up-to-date protection measures to check it for computer viruses, Trojan horses, virus hoaxes and similar programs, program parts and malicious functions that may result in loss or falsification of data or programs or impairment of systems or parts of them (hereinafter referred to as „computer viruses“). Nevertheless, it is not possible to rule out the risk that the software contains unknown or mutated computer viruses or that such viruses may enter an (operating or control) system of the customer at a later time and possibly change or delete program data of the software or other data or programs or impair systems.
- (4) The customer himself shall take measures to protect against computer viruses and other destructive data. The customer shall be obliged to test whether the supplied software or files are infected with computer viruses before executing the software or opening the files. This shall also apply to software the customer wishes to use as part of his (operating or control) systems, where the functionality of his software may be affected thereby.
- (5) The customer shall be obliged to back up data himself on a regular basis in order to prevent loss of it as a result of computer viruses. If data is lost or manipulated, Fäth GmbH shall be liable only for the cost involved in restoring the correct data if the customer has backed it up properly.

## § 10 Duration of Contract

If the deliveries or services are not a one-off delivery/service and if no fixed term has been agreed upon with the customer, the contract duration shall be one year. It shall be extended by one year each time neither of the parties to the contract objects to the extension in writing three months prior to the expiry of the term.

## § 11 Insolvency of the Customer

If the customer suspends payment or the customer or one of its creditors applies for the opening of insolvency proceedings regarding the customer's assets, or the insolvency proceedings against the customer's assets are opened, or the opening of such proceedings is refused for insufficiency of assets, Fäth GmbH may, without prejudice to its other legal contractual rights, terminate the contract without notice.

# General Terms and Conditions of Sale

05/2015

## § 12 Duty to Cooperate

The customer shall ensure that Fäth GmbH's employees have unhindered access to the place of performance during the agreed delivery period/time of performance. If Fäth GmbH needs to carry out clearance work prior to delivery or service provision, it will be invoiced separately. At its own expenses, the customer shall provide sufficient air, ventilation, electricity, sockets, heating as well as a lockable storage area for work equipment and spare parts at the place of delivery.

## § 13 Non-Disclosure of Confidential Information

- (1) The existence and terms of legal agreements between Fäth GmbH and the customer; any data, specifications, drawing, technology or other information or materials that relate to the business, technology, prospects, financial condition or other proprietary or confidential information of Fäth GmbH, which the customer may obtain from Fäth GmbH or otherwise discover, and all customers' information derived from or incorporating in any of the foregoing shall be maintained by the customer as confidential using the same degree of care that the customer uses to protect its own confidential information or materials (but not less than reasonable care) and shall be used only for purposes of performing pursuant to the existing legal agreements between Fäth GmbH and the customer. The customer agrees not to use the name, logos or trademarks of Fäth GmbH or to quote the opinion of any Fäth GmbH employee in any advertising or otherwise without obtaining the prior written consent of Fäth GmbH.
- (2) Absent from a formal written agreement to the contrary, all data, specifications, drawings, technology, and other information or materials supplied to Fäth GmbH by the customer will be provided to Fäth GmbH on a non-confidential basis and may be used and/or disclosed by Fäth GmbH without restriction.

## § 14 Applicable Law, Place of Jurisdiction

- (1) The law of the Federal Republic of Germany governing the legal relationships between domestic parties shall exclusively apply to all legal relationships between Fäth GmbH and the customer. The provisions of the German private international law and the United Nations Convention on the International Sale of Goods shall be excluded.
- (2) The place of Fäth GmbH's registered office shall have jurisdiction and venue for all disputes arising out of the contract. However, Fäth GmbH shall be authorized to file legal action at the customer's main place of business.

## § 15 General Provisions

- (1) Unless otherwise specified in the acknowledgement of order, the place of performance for the parties' mutual obligations from the contractual relationship shall be the place of Fäth GmbH's registered offices. This shall also apply if clauses customary in the trade have been agreed.
- (2) Declarations serving to establish, safeguard or exercise rights shall not be valid unless given in writing.
- (3) The customer shall not assign his contractual rights to a third party without the written consent of Fäth GmbH.
- (4) If individual provisions of these General Terms of Sale are or become invalid completely or in part, the validity of the remainder of the provisions shall be unaffected.

\*\*\*

### Fäth GmbH

Am Dillhof 14  
 63863 Eschau / Hobbach  
 Germany  
 Telefon +49 (0) 9374 / 979709-0  
 Telefax +49 (0) 9374 / 979709-19  
 E-Mail info@faeth.com  
 www.faeth.com

### Director of Company

Michael Fäth und Florian Fäth

### Registration court Aschaffenburg

HRB 10707