

## **FOGTEC Brandschutz GmbH**

### General Terms of Delivery and Payment (Effective 02/2015)

#### **1. GENERAL**

1.1 Our Terms of Delivery and Payment shall always apply in the latest version and to all first-time, ongoing and future business relationships with any domestic or foreign contracting party (hereinafter also referred to as “purchaser” or “buyer”) unless any deviation has been expressly accepted by us in writing. Any side agreements and subsequent variations shall be binding only when confirmed by us in writing. This shall also apply to any suspension of the written form clause. The takeover of our supplies and services by the contracting party shall be considered as acceptance of our General Terms of Delivery and Payment.

1.2 Any conditions of purchase of the buyer shall be binding upon us only after express acceptance in writing. The same shall apply to any other General Conditions of Sale of the purchaser or contracting party.

1.3 Any agreements of the contracting party with travelling salesmen, commercial agents or other agents and representatives shall be binding upon us only when confirmed by us in writing. Our commercial agent or other agents, representatives and travelling salesmen shall be entitled to accept cash payments and cheques only after producing a collection authority.

1.4 We shall be entitled to process purchaser’s data as contemplated under the Austrian Data Protection Act, as amended, provided that they are connected with the business relationship to such purchaser.

#### **2. OFFER AND CONCLUSION OF CONTRACT**

2.1 Our offers are without engagement, unless they are expressly defined in writing as being binding by us, and may be subject to errors and misprints. Any delivery, service or other contract shall be deemed to have been concluded only if we have confirmed the customer’s purchase order or other order in writing or have delivered the merchandise or rendered the service.

2.2 Side agreements and subsequent variations shall be binding only when confirmed by us in writing.

2.3 We reserve the right to make changes of the production process as well as of the product composition provided they do not result in a lasting change of the type or quality of such product.

2.4 Unless expressly agreed otherwise, the information published by us in catalogues, brochures and other publications in the form of text or illustration (e.g. descriptions, figures or drawings) shall conclusively characterise the quality of the products supplied by us, and their applications. They are to such extent conventional approximative values unless they are specifically stated as binding in the order confirmation. Any other information from the manufacturer shall not be binding.

#### **3. PRICES AND PAYMENT TERMS**

3.1 Unless otherwise stated in the order confirmation, our prices are quoted ex works and exclusive of costs or charges for loading, packaging, freight, postage, transfer, insurances and the statutory sales tax applicable from time to time. The costs of transport packing and transport will be invoiced separately; the sales tax applicable at the date of invoicing shall be stated separately in the invoice.

3.2 Payments shall be made in € (EURO) and have to be effected free of postage and expenses. They must not be made to other pay offices than those indicated by us. Bills of exchange and cheques shall

be considered as payment only when finally cashed, and are accepted without obligation of timely presentation and protesting.

3.3 All payments shall be effected free to our pay office in cash without any deduction and subsequent to a notification that the purchase item is ready for shipment. Payments for the performance of business, repair and after-sales services shall be due and payable at once in cash and without any deduction.

3.4 For orders exceeding a value of 25.000,00 EUR, payment shall be made in cash without any deduction free to our pay office in three instalments, i.e. in the amount of 1/3 of the purchase price after receipt of our order confirmation, in the amount of further 1/3 after notification that the goods are ready for shipment and the remainder within 30 days from the date of invoice. We shall be entitled to start production only after receipt of the first instalment.

3.5 In the event of untimely payment (default), we shall be free

3.5.1 to immediately make due and assert towards purchaser all claims from the transaction in question and from other transactions including those not yet due;

3.5.2 to claim interest in the amount of 9,2 percentage points above the base interest rate p.a. (§456 UGB - Austrian Commercial Code);

3.5.3 to retain our supplies and other services under the order in question or other orders at the expense of the purchaser (storage costs amounting to monthly 0,5% of the invoiced amount) until all claims outstanding under the order in question or other orders have been completely satisfied by purchaser;

3.5.4 to demand an adequate security deposit. Any further rights resulting from the debtor's default shall remain unaffected.

3.6 Any setoff against counterclaims by purchaser shall be permitted only if such counterclaims are uncontested or have been established as final and absolute. A right of retention can be asserted by purchaser only when and insofar as his counterclaim is based on the same contractual relationship.

3.7 If, after conclusion of the contract, we get knowledge of facts indicating a substantial deterioration of the financial circumstances of the contracting party that might jeopardise our right to counter-performance according to best commercial judgment – to which belong *inter alia* the filing of a petition in insolvency – we may require the depositing of an suitable security within an adequate period of time or delivery against payment -performance until the date of performance by such party. Should the contracting party fail to comply with our justified demand, we may rescind the contract and claim compensation for damage due to insufficient security. In such situation, we are entitled to require immediate payment of all amounts due – including deferred payments if any.

#### **4. DELIVERY**

4.1 Periods of delivery (deadlines) shall be binding only when expressly agreed in writing with binding effect. Periods of delivery shall in general begin at the date of our order confirmation, unless the unambiguous clarification of all technical and commercial details, complete performance of any contributory actions required from purchaser, or the provision of any payment guarantees agreed are carried out later. In such case the periods of delivery shall begin on the later date in each case. The delivery period shall be deemed to have been observed when the goods have left our works or warehouse prior to its expiration, or when readiness for shipment has been announced to the contracting party in the event that the goods cannot be shipped in time through no fault of ours.

4.2 Periods and deadlines shall be extended, by the period of time during which the contracting party fails to meet its obligations towards us, without prejudice to the rights accruing to us from delayed payments.

4.3 Unforeseeable extraordinary events not attributable to us and our vicarious agents, such as labour disputes, plant breakdowns, government action, transport breakdown or other events of Force Majeure, no matter whether such events occur at our facilities or those of our subcontractors, shall exempt us from the obligation of the respective contract, restraints of a temporary nature though only for the duration of such restraint plus an adequate warm-up period. If delivery becomes impossible by such events with subsequent effect or unacceptable for one of the parties, both parties shall be entitled to rescind the contract. Unacceptability is presumed in the event of a restraint on performance lasting more than four months.

4.4 Our liability for damage resulting from delays and attributable to ordinary negligence in the performance of duties shall be limited to lump-sum damages for delayed performance in the amount of 0.5 % for every complete week of delay, however not exceeding a maximum total of 5 % of the net order value, unless delayed delivery is due to violation of an essential contractual obligation (major obligation) and/or such violation of duties results in harm to life, body or health. There shall be no shift of the burden of proof to the disadvantage of the contracting party in relation to this provision. The purchaser's statutory right of rescission shall not be affected but presupposes that we are accountable for the delay. The purchaser shall be obliged to state at our request within a reasonable period whether he will rescind the contract because of delayed delivery after expiration of the deadline and/or claim damages instead of performance pursuant to section 10 of these General Terms of Delivery and Payment, or whether he will insist on delivery.

4.5 We are entitled to effect partial deliveries provided that these are acceptable to the contracting party. Partial deliveries may be invoiced separately.

4.6 If the purchaser gets into default in acceptance or negligently fails to meet any other of his duties of contribution, we shall have the right to claim compensation for the damage resulting to us therefrom, including for any extra expenses. Our right to further claims shall be reserved.

4.7 The right of variations in design and shape, deviations in the colour shade as well as modifications of the scope of supply of the ordered product by the manufacturer shall be reserved during the period of delivery provided that the buyer can reasonably be expected to accept such variations, deviations or modifications while showing consideration for our interests. Should we or the manufacturer use any symbols or numbers to identify the order or the item of purchase ordered, no rights can be derived from this fact alone in respect of the concrete definition of the item of purchase or the scope of supply.

## **5. INFORMATION, ADVICE, AND USE OF PRODUCTS**

5.1 Information and advice in respect of our products are provided on basis of our experience to date. The values stated in this connection are average values determined. Suitability tests of the products supplied and compliance with processing instructions shall not become dispensable by such information or advice. Verbal statements shall not be binding. Any liability shall be subject to section 10 of these General Terms of Delivery and Payment.

5.2 Our products, product descriptions and recommendations of use as well as application instructions are based on standard tests and the corresponding experience. The results of such standard tests cannot be transferred to every case of application. The recommendations of use therefore are merely general tips for using the products and unbinding.

5.3 The buyer assures and undertakes to use our products after conclusion of the contract exclusively while employing persons experienced in fire protection and observing our product descriptions,

recommendations for use and application instructions and their previous verification as to suitability in the concrete individual case by persons experienced in fire protection.

## **6. SHIPMENT AND TRANSFER OF RISK**

6.1 Unless otherwise agreed, delivery shall be ex works.

6.2 If the goods are shipped at the request of buyer to a place other than the place of performance, the contracting party shall bear all costs resulting therefrom. We shall be free to choose the shipping route and the shipping company to our best judgment. Transport damage shall be reported by the contracting party in writing immediately after receipt of the goods, stating nature and scope of the damage. Any insurance of the goods against transport damage, transport loss or breakage shall be taken out exclusively at the express request of the contracting party at the charge and for the account of latter.

6.3 For deliveries ex works, dispatch and transport shall always be at the risk of the contracting party. This shall also apply to deliveries made ex third party's warehouse (transfer orders) and for the return of goods or empties (two-way transport packages). The risk shall pass to the contracting party, also in case of partial deliveries, as soon as the consignment has been handed over to the person in charge of the transport or has left our warehouse for shipment, or our works in case of delivery ex works

6.4 If shipment is delayed for reasons attributable to the contracting party, or if the contracting party is to take itself charge of the transport of goods, the transfer of risk to the contracting party shall occur at the moment when the contracting party is notified of their readiness for shipment. Any storage costs arising after the transfer of risk shall be borne by the contracting party. In case of storage at our works or warehouses, the monthly storage costs will amount to 0.5 % of the invoice amount. The right of proving higher storage costs shall be reserved. We are entitled to otherwise dispose of the goods after the fruitless expiration of a reasonable period of time, and to supply the contracting party in an extended reasonable period of time.

6.5 For deliveries free domicile/warehouse, the risk shall pass to the contracting party, also for partial deliveries, as soon as the products have arrived ready for unloading at his place of business/at his warehouse. Unloading shall be carried out immediately and properly by personnel and unloading equipment to be made available in sufficient number by the contracting party. If transport to the place of destination fails for reasons lying within the scope of risk of the contracting party, the risk shall pass to the contracting party upon failure of access. This shall also apply to cases of unjustified refusal of acceptance. Subsection section 6.4 of these General Terms of Delivery and Payment shall apply mutatis mutandis.

## **7. INDUSTRIAL PROPERTY RIGHTS**

7.1 We shall reserve the right of ownership and copyright to illustrations, drawings, models, samples, calculations and other documents. They must neither be reproduced nor made available to other parties without our approval and have to be returned to us immediately when requested or in case the order is not placed with us. This shall also apply to documents not "classified as confidential".

7.2 If our item of delivery includes software, all rights to such software, in particular copyright and other industrial property rights, shall remain with us. We will merely grant an application-related license to use. The exploitation rights reserved to the author pursuant to §§14 to 18a UrhG (Austrian Copyright Act), in particular the reproduction, processing or dissemination, shall require our prior consent in writing.

7.3 If the property rights of third parties are violated during the manufacture of products according to specimens or other data furnished by the contracting party, the contracting party shall indemnify hold us harmless from any and all claims.

7.4 In the event that an order is not placed with us, we shall be entitled to claim an adequate remuneration for drawings, models, plans or similar documents prepared by us along with the offer.

## **8. RESERVATION OF TITLE**

8.1 All goods supplied shall remain our property until the remuneration owed, including all subsidiary claims, have been paid in full. If bills of exchange or cheques have been accepted, payment shall be deemed to have been effected only after their final cashing. Subsidiary claims include, without being limited to, the costs of packing, freight, insurance, bank charges, demands for payment, attorneys', court and other fees.

8.2 In case of treatment and processing of the conditional commodity by us we shall obtain sole proprietorship as processor of the processed product, without imposing any obligation on us. The processed commodity shall be considered as conditional commodity within the meaning of subsection 8.1 of these General Terms of Delivery and Payment. When such conditional commodity is processed, combined or mixed by the contracting party with other commodities or materials, we shall have a co-proprietorship to the processed or new product in proportion of the invoice value of the conditional commodity to the invoice value of the other commodities or materials used. Should our property right extinguish as a result of combination or mixing, the contracting party shall already now assign to us the property rights in the new stock or product accruing to him in the amount of the invoice value of the conditional commodity and shall hold it in safe custody for us free of charge. The co-proprietorship resulting therefrom shall be considered as conditional commodity within the meaning of subsection 8.1 of these General Terms of Delivery and Payment.

8.3 The contracting party shall take the conditional commodity on our behalf into custody customary in trade or commerce. He shall be obliged to store and mark the commodity belonging to us separately. The contracting party shall be liable for the loss of our goods. He shall insure such goods for his account and in our favour against all risks, in particular against fire, water and theft. Any insurance claims are herewith assigned to us in advance. In case of damage, we shall be advised immediately.

8.4 The contracting party shall be entitled only within the ordinary course of business and as long as it is not in default, to resale, processor combine with other items or otherwise incorporate the conditional commodity (hereinafter referred to as „resale“). Any other disposal of the conditional commodity is not permitted. Any attachments made by third parties, or other access to the conditional commodity shall be advised to us immediately. All costs of intervention, e.g. the costs of a third-party action against execution acc. to §37 EO (Austrian Enforcement Code) shall be for the account of the contracting party provided that they cannot be collected from the third party (opponent of the action against execution) at first request and the intervention was justified. If the contracting party grants its buyer a respite for payment of the purchase price, it shall reserve the title to the conditional commodity against the latter on the same conditions on which we have reserved the title of property of the conditional commodity; however, the contracting party shall not be obliged to also reserve the title to claims arising against his buyer only in the future. Otherwise the contracting party shall not be authorised for resale.

8.5 Any claims of the contracting party from the resale of conditional commodity are already assigned to us herewith. They shall serve as security to the same extent as the conditional commodity. The contracting party shall be entitled to and authorised for reselling only when it is certain that the claims accruing to it therefrom will pass to us.

8.6 When the conditional commodity of the contracting party is sold at a summed-up price together with other merchandise not supplied by us, the claim from such resale shall be assigned to us in the amount of the invoice value of our conditional commodity then sold.

8.7 If the claim assigned is included in a current accounting, the contracting party shall already herewith assign to us a part of the balance the amount of which shall correspond to such claim, including the closing balance of the current account.

8.8 Without prejudice to our right of collecting ourselves the claim assigned to us, the contracting party shall be authorised to collect the claim assigned to us subject to cancellation. We shall be entitled to cancellation if the contracting party does not duly meet its obligations of payment from the business relationship with us or we are informed about circumstances substantially reducing the credit standing of the contracting party. If the prerequisites for exercising the right of cancellation exist, the contracting party shall at our request immediately disclose the claims assigned and their debtors, provide all information required for the collection of such claims, hand over to us the pertinent documents and notify debtor of the assignment. We are ourselves also entitled to notify debtor of the assignment.

8.9 In the event that the nominal value (invoice amount of merchandise or nominal amount of the right to recover debts) of the securities existing on our behalf exceed the claims secured by more than 20 % in total, we shall to such extent be obliged at the contracting party's request to release securities at our discretion.

8.10 If we assert the reservation of ownership, this shall only be considered as a rescission of the contract when we expressly confirm it by written statement. The right of the contracting party to hold the conditional commodity in possession shall extinguish when it does not meet its obligation from this or another contract with us.

## **9. WARRANTY**

9.1 The delivery of second-hand items shall, to the extent that the contracting party is not a consumer in the meaning of the Austrian Consumer Protection Act, generally be effected to the exclusion of any warranty whatsoever. In case of delivery of second-hand or new items, we shall also not be liable for inappropriate or unsuitable use of the products.

9.2 The contracting party is obliged to carefully inspect the products supplied – even if specimens or samples were previously transmitted – immediately after arrival at his location for completeness and proper condition. The supply shall be deemed to have been approved unless a complaint in writing by facsimile transmission or e-mail is received within three working days after arrival of supply at destination or, if the fault could not be detected during a proper inspection, within three working days after its detection. This shall also apply to increased delivery. If an increased delivery is not complained of within three working days after receipt of goods at destination, it shall be deemed to have been accepted. Our sales force members are not authorised to accept complaints.

9.3 In the event of a justified complaint, the contracting party shall be entitled to claim for warranty, at our discretion, either by exchange through the supply of faultless products against return of the goods complained of or by repair through the removal of defects. If such exchange or repair has failed or is impossible or involves disproportionate expenses on our part or is unacceptable to the contracting party (§932(4) ABGB) because

a) we finally decline such exchange or repair,

b) we fail to effect such exchange or repair at a contractually agreed date or within a determined period and the contracting party has linked its continued interest in such performance with the timeliness of the performance, or

c) if special circumstances are prevailing which, when having regard for the mutual interests, justify the immediate rescission without setting an appropriate grace period (§ 918 ABGB), the contracting party shall be entitled forthwith to reduce the purchase price or at its discretion to rescind the contract and claim damages instead of performance pursuant to section 10 of these General Terms of Delivery and Payment.

9.4 The expenses required for the exchange or repair, in particular transport, travelling, labour and material costs, will be borne by us. This does not apply when expenses are increased because the product has been transferred after delivery to a place other than the place which has been agreed on in the order confirmation, unless the transfer is in accordance with the intended use of the item.

9.5 If the contracting party accepts a defective item although being aware of the defect, it shall be entitled to the claims and rights on account of defects only if expressly reserved by it because of such defect upon acceptance.

9.6 The assignment of claims for defects by the contracting party to third parties shall be excluded. In case of complaints, payments by the contracting party shall be retained only to such extent as is justified in proportion to the defects complained of.

9.7 If a defect is due to faulty assembly not carried out by us, or to chemical, electrochemical or electrical influences, the contracting party shall be entitled to claims and rights for defects if the assembly and/or installation of the delivered items has been carried out with competence and we are answerable for the chemical, electrochemical or electrical influences. The competent performance of the assembly shall, in such case, be declared and proved by the contracting party.

9.8 Unless the contracting party is consumer in the meaning of the Austrian Consumer Protection Act, the period of limitation for claims for defects shall be 12 months. For substitutes or repaired products, we shall be liable until expiration of the periods of limitation applicable to the original item of delivery.

## **10. LIABILITY FOR COMPENSATION OF DAMAGE**

10.1 We shall be liable for damage resulting from harm to life, body or health according to the legal regulations.

10.2 In all other cases, our liability for the violation of duties and our extra-contractual liability shall be limited to wrongful intent and gross negligence.

10.3 Exempted from subsection 10.2 of these General Terms of Delivery and Payment shall be the violation of essential contractual duties (major obligations). In such cases, we shall even be liable in the event of ordinary negligence for faults of our own as well as for those of our employees, staff members or simple vicarious agents.

10.4 Claims from damages, unless raised in cases of wrongful intent or gross negligence and unless there is no liability for harm to life, body or health, shall be limited to the typically occurring contractual damage the occurrence of which we had to anticipate on conclusion of the contract because of the circumstances known to us at that time, and shall be barred by limitation within 12 months as from knowledge of the damage and damaging party.

10.5 Any further liability shall be excluded, independent of its cause in law. We shall particularly not be held liable for any lack of economic success, loss of profit, indirect damage, consequential damage of defects and damage from claims of third parties.

10.8 There is no shift in the burden of proof to the disadvantage of the contracting party in relation to the above provisions

10.9 Claims for damages under the product liability law shall remain unaffected.

## **11. PLACE OF PERFORMANCE, PLACE OF JURISDICTION, APPLICABLE LAW**

11.1 Unless agreed otherwise in writing, the place of performance of all mutual obligations shall be Vienna, Austria.

11.2 The exclusive place of jurisdiction for all disputes arising under the contract - including those over its existence or non-existence - shall be our domicile as stated in the Companies' Register in Vienna, Austria.

11.3 The relationship between ourselves and the contracting party shall be governed by Austrian law to the exclusion of the Convention on the International Sale of Goods (CISG) of the United Nations and the provisions of the Conflict of Laws. In addition, interpretations of the agreement shall be subject to the respective clauses of INCOTERMS in the version applicable at the date of delivery, provided that the application of an INCOTERMS clause has been presupposed or agreed by mutual understanding.

11.4 Should any of the provisions be or become ineffective or impracticable, this shall not affect the validity of the remaining provisions. In the place of the ineffective or impracticable provision, a provision shall apply that comes as close as possible to the ineffective or impracticable provision when considered under economic aspects. The same shall apply when filling up any omissions herein.

11.5 Consumer's mandatory rights pursuant to the Austrian Consumer Protection Act will not be restricted by the above-mentioned conditions.