

**1 GENERAL**

- 1.1 The following General Terms and Conditions of delivery and payment of FOGTEC Brandschutz GmbH apply to contracts with merchants, which are concluded in the course of their business, and to contracts with public entities, including special funds organized under public law. These General Terms and Conditions shall always apply in the latest version and to all orders in process and to future orders of any domestic or foreign customer unless any deviation has been expressly accepted by us in writing. Any side agreements and subsequent variations shall be binding upon us only when confirmed by us in writing. This shall also apply to any suspension of the written form clause. These General Terms and Conditions are deemed to be accepted, at the latest, upon the receiving of the product or service.
- 1.2 We hereby reject any conditions of purchase of the customer. These shall only be binding upon us after express acceptance in writing. The same shall apply to any other general conditions of the customer.
- 1.3 Any agreements of the customer with travelling salesmen, agents and representatives shall be binding upon us only when confirmed by us in writing. Our agents, representatives and travelling salesmen shall be entitled to accept cash payments and cheques only on presentation of a collection authority.
- 1.4 We shall be entitled to process customer's data as contemplated under the applicable data protection law.

**2 OFFER AND CONCLUSION OF CONTRACT**

- 2.1 Our offers are non-binding. Any 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 goods or the service has been performed.
- 2.2 Side agreements and subsequent variations shall be binding upon us 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 and 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 completely characterise the quality of the products supplied by us and their applications. They are to such extent conventional approximate values unless they are specifically stated as binding in the order confirmation in writing. Any other information from the manufacturer shall not be binding.
- 2.5 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.

**3 PRICES AND PAYMENT TERMS**

- 3.1 Unless otherwise stated in the order confirmation in writing, our prices are quoted EXW Cologne, Federal Republic of Germany (ex works pursuant to the ICC Incoterms 2010), and exclusive of loading, packaging, freight, postage, transfer, insurances and the applicable value added tax. The costs of transport packing and transport will be invoiced separately; the applicable value added tax at the date of invoicing shall be stated separately in the invoice.
- 3.2 Payments must 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 will only be accepted upon explicit agreement and on account of performance. They will not be considered as payment

until they are honored, and are accepted without obligation of timely presentation and protesting.

- 3.3 Payments shall be effected free to us 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 and without any deduction. In case of the law for work and services being applicable, the payment shall become due and payable immediately upon the statutory due date. We are entitled to claim down payments according to the value of already performed partial services.
  - 3.4 For all orders exceeding a value of 25.000,00 EUR, payment shall be made without any deduction in the amount of 1/3 of the purchase price after receipt of our order confirmation, 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, we shall be free
    - 3.5.1 to immediately assert all claims from the transaction in question and from other transactions with the customer including those not yet due,
    - 3.5.2 to claim interest in the amount of 9 % above the base interest rate) p.a.,
    - 3.5.3 to retain our supplies and other services under the order in question or other orders until all claims outstanding under the order in question or other orders have been completely satisfied by customer,
    - 3.5.4 to demand an adequate security deposit.Any further rights resulting from the customer's default shall remain unaffected.
  - 3.6 Any setoff against counterclaims by customer shall be permitted only if such counterclaims are uncontested or have been established as final and absolute. For defects, the customer may at most retain triple the sum in the amount of the outlay for subsequent performance. A right of retention can be asserted by customer 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 customer that might jeopardize our right to counter-performance according to best commercial judgment – to which belong in particular the filing of a petition in insolvency– we may require the depositing of an suitable security within an adequate period of time or performance on counter-performance until the date of performance by such party. Should the customer fail to comply with our justified demand, we may rescind the contract and claim compensation for damage. 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. They shall begin at the date of our order confirmation, however not before unambiguous clarification of all technical and commercial details, complete performance of any contributory actions required from customer, and the provision of any payment guarantees agreed. The delivery period shall be deemed to have been observed when readiness for shipment has been announced in time.
  - 4.2 The occurrence of default in delivery will be determined according to statutory law. However, in all cases a reminder from the customer shall be required.
  - 4.3 Periods and deadlines shall be extended, by the period of time during which the customer fails to meet its obligations towards us, without prejudice to the rights accruing to us from delayed payments.
  - 4.4 Unforeseeable extraordinary events not attributable to us and our vicarious agents, such as labor 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.

- 4.5 Our liability for damage resulting from delays and attributable to slight 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 purchase price in respect of that part of the delivery or the performance which could not be put to the intended use due to the delay, unless delayed delivery is due to violation of an essential contractual obligation (cardinal 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 customer in relation to this provision. The customer's statutory right of rescission shall not be affected but presupposes that we are accountable for the delay. The customer 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 or reimbursement of expenses pursuant to section 11, or whether he will insist on delivery.
- 4.6 As long as this would be reasonable for the customer, we have the right to make delivery in installments. Partial deliveries may be invoiced separately.
- 4.7 If the customer 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. The right to further claims shall be reserved.
- 4.8 The right of variations in design and shape, deviations in the color shade as well as modifications of the scope of supply by the manufacturer shall be reserved during the period of delivery provided that the customer 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 CONTRACTUAL SERVICES

- 5.1 An agreed implementation period does not begin until receipt of all necessary commercial and technical documentations and information to fulfilling the service contract.
- 5.2 The customer has to assure his cooperation, contributions and assistance at its own expenses.
- 5.3 This also applies to the required equipment and material necessary for installation and assembly, such as scaffolding, lifting gear and other devices, energy and water at the point of use.
- 5.4 Prior to the start of the assembly and installation work, the customer shall on its own initiative provide all necessary information on the location of concealed power, gas and water lines/pipes, supply of electrical power and any similar installations as well as necessary static data. For the time of assembly and installation, customer shall on its own initiative provide water for flushing and filing of the pipe work, sufficient ventilation and air conditioning as applicable and office containers. In addition customer shall on its own initiative provide electrical connections for power, water as well as provision of sufficient drainage, ventilation and air condition as applicable for that installation. Access to the working place has to be ensured by the customer at all times reasonably required by us.
- 5.5 If performance is delayed due to circumstances for which we are

not responsible, the customer shall to a reasonable extent bear the costs for waiting time and also for necessary additional travels of the assembly staff.

- 5.6 The customer shall take necessary security measures to protect property and health of customer and third parties.
- 5.7 The customer has to grant access to the working place to required inspection teams (such as certification authorities).

## 6 INFORMATION, ADVICE AND USE OF PRODUCTS

- 6.1 Information and advice in respect of our products are provided on basis of our experience. The values stated are average values. 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 11 of these terms.
- 6.2 Our products, product descriptions and recommendations of use as well as application instructions are based on standard tests and the corresponding experiences. The results of such standard tests cannot be transferred to every case of application. The recommendations of use therefore are general information for using the products.
- 6.3 The customer assures and undertakes to use our products exclusively by 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.

## 7 SHIPMENT AND TRANSFER OF RISK

- 7.1 Unless otherwise agreed in writing, delivery shall be EXW Cologne, Federal Republic of Germany (ex works pursuant to the ICC Incoterms 2010).
- 7.2 If the goods are shipped at the request of customer to a place other than the place of performance, the customer shall bear all costs resulting therefrom. We shall be free to choose the shipping route and the shipping company.
- 7.3 The risk of accidental loss or accidental deterioration shall be transferred to the customer upon delivery. In the event of sale to destination, the risk of accidental loss and accidental deterioration is transferred to the customer upon the handover of the goods to the forwarding agent, the carrier or any other person or institution in charge for shipping. 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). If the statutory provisions on contracts of work and services apply and acceptance of the performance is therefore required, the risk of accidental loss or of accidental deterioration shall pass to the customer upon acceptance of the performance. It is deemed equivalent to the handover or acceptance if the customer is in default of acceptance.
- 7.4 Any storage costs arising after the transfer of risk shall be borne by the customer. 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 customer in an extended reasonable period of time.
- 7.5 For deliveries free domicile/warehouse, the risk shall pass to the customer, 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 customer. If transport to the place of destination fails for reasons lying within the scope of risk of customer, the risk shall pass to the customer upon failure of access. This shall also apply to cases of unjustified refusal of acceptance. Subsection 7.4 shall apply mutatis mutandis.

## 8 INTELLECTUAL PROPERTY RIGHTS

- 8.1 We unconditionally reserve title to all of our quotations, illustrations, drawings, models, samples, calculations and other documents and unconditionally reserve the right to exploit them under copyright law. 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".
- 8.2 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 actions mentioned in § 69 c of UrhG (copyright law), in particular the reproduction, processing or dissemination, shall require our consent in writing.
- 8.3 We are not liable for infringements of third-party rights (intellectual property rights, patents, copyrights, etc.) if the goods were produced in accordance with drawings, drafts, models or other comparable descriptions or information supplied by the customer or where the customer is for any reason responsible for the infringement of intellectual property rights. In this case, the customer must indemnify, defend and hold us harmless against any third-party claims from and alleged or actual infringement of intellectual property rights.

## 9 RESERVATION OF TITLE

- 9.1 All goods supplied shall remain our property until all of our claims against the customer that arise from the business relationship have been satisfied. If bills of exchange or cheques have been accepted, payment shall be deemed to have been effected only after their final cashing.
- 9.2 The treatment and processing of the conditional commodity shall be carried out for us as manufacturer within the meaning of § 950 BGB without imposing any obligation on us. The processed commodity shall be considered as conditional commodity within the meaning of subsection 9.1. When such conditional commodity is processed, combined or mixed by the customer with other commodities, we shall have a co-proprietorship to the new product in proportion of the invoice value of the conditional commodity to the invoice value of the other commodities used. Should our property right extinguish as a result of combination or mixing, the customer 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 9.1.
- 9.3 The customer 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 customer 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.
- 9.4 The customer shall be entitled only within the ordinary course of business and as long as it is not in default, to resale, process or 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 according to § 771 ZPO (German Code of Civil Procedure) shall be for the account of the customer 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 customer 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 customer shall not be obliged to also reserve the title to claims arising against his buyer only in the future. Otherwise the customer shall not be authorized for resale.

- 9.5 Any claims of the customer 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 customer shall be entitled to and authorized for reselling only when it is certain that the claims accruing to it therefrom will pass to us.
- 9.6 When the conditional commodity of the customer 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.
- 9.7 If the claim assigned is included in a current accounting, the customer 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.
- 9.8 Without prejudice to our right of collecting ourselves the claim assigned to us, the customer shall be authorised to collect the claim assigned to us subject to cancellation. We shall be entitled to cancellation if the customer 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 customer. If the prerequisites for exercising the right of cancellation exist, the customer 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.
- 9.9 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 customer's request to release securities at our discretion.
- 9.10 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 customer to hold the conditional commodity in possession shall extinguish when it does not meet its obligation from this or another contract.

## 10 WARRANTY

- 10.1 The delivery of second-hand items shall, to the extent that the customer is an entrepreneur in the meaning of § 14 BGB (German Civil Code), generally be effected to the exclusion of any warranty.
- 10.2 In respect of our deliveries, the provisions of § 377 HGB (German Commercial Code) always apply to the customer's duties to inspect and give notice of defects. Our sales force members are not authorized to accept complaints.
- 10.3 Where a defect is found during the warranty period and the cause of such defect already existed at the time that the risk passed, we will be entitled to remedy our performance by opting to either repair the defect or to deliver goods free from defects to replace the defective goods.
- 10.4 If we fail to remedy our performance, the customer will – irrespective of any claims for damages – be entitled to reduce the price or rescind the contract in accordance with the statutory provisions.
- 10.5 Where we remedy our performance, we will not be responsible for dismantling costs in respect of defective goods which have already been installed or for installation costs to install replacement goods unless we were originally under an obligation to install the goods.
- 10.6 The customer is not entitled to demand that we remedy our performance if the difference between the characteristics of the goods delivered and the agreed characteristics is only insignificant or if their usability is only slightly impaired. If the

- customer modifies the goods in an improper manner, it will also be excluded from bringing any warranty claims.
- 10.7 The expenses required for subsequent performance, in particular transport, travelling, labor 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 of performance.
  - 10.8 If the customer 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.
  - 10.9 The assignment of claims for defects by the customer to third parties shall be excluded.
  - 10.10 In case of complaints, payments by the customer shall be retained only to such extent as is justified in proportion to the defects complained of.
  - 10.11 If a defect is due to faulty assembly not carried out by us, or to chemical, electrochemical or electrical influences, the customer 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 responsible for the chemical, electrochemical or electrical influences. The competent performance of the assembly shall, in such case, be declared and proved by the customer.
  - 10.12 Any warranty claims by the customer will become statute barred within 12 months from the delivery of the item. Insofar as an acceptance has been agreed the statute-of-limitations shall begin with the acceptance. This does not apply in the case of claims arising in connection with loss of life, bodily injury or illness, or in cases of gross negligence or liability under the Product Liability Act (Produkthaftungsgesetz), or in cases where the law makes mandatory provision for a longer limitation period for rights of redress.
  - 10.13 This section 10 applies mutatis mutandis to defects in title which do not result from the infringement of third-party intellectual property rights.

## **11 LIMITATION OF LIABILITY**

- 11.1 We shall be liable for any intentional or grossly negligent breach of duty on the part of our employees and representatives in accordance with the statutory provisions.
- 11.2 In the event of a breach of an essential contractual duty due to slight negligence on our part, our liability will be limited to the foreseeable damage that is typical for a breach of contract of this kind. Essential contractual obligations are those obligations for which the contract was entered into and upon whose fulfillment the customer is entitled to rely.
- 11.3 Where delivery or performance is late due to slight negligence, the customer's claim for damages for loss from the delay will be, as set forth in section 4.5 of these terms, limited to a maximum of 5% of the purchase price in respect of that part of the delivery or the performance which could not be put to the intended use due to the delay.
- 11.4 Any further liability for damages is excluded.
- 11.5 This limitation of liability does not apply to liability for intentional wrongdoing or negligence in connection with loss of life, bodily injury or illness, or where we have given a guarantee. These remain – as does mandatory liability under the Product Liability Act – unaffected.

## **12 PLACE OF PERFORMANCE, PLACE OF JURISDICTION, APPLICABLE LAW**

- 12.1 The place of performance of all mutual obligations shall be Cologne (Germany).
- 12.2 The legal relationship connected with this contract shall be governed by German 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.
- 12.3 All disputes arising out of or in connection with this contractual

relationship or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law. The seat of the arbitration is Cologne, Germany. The language of the arbitration shall be English. The rules of law applicable to the merits shall be German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

- 12.4 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.

(04/2017)