

# PURCHASE CONDITIONS

## 1. General

Only the Purchase Conditions of FERCHAU shall apply; we shall not accept any General Terms and Conditions of the supplier which conflict with or differ from these Purchase Conditions, unless we have expressly agreed in writing that they are valid.

## 2. Offers

- 2.1 Offers from suppliers shall be accepted as offers to enter into a contract based solely on the Purchase Conditions of FERCHAU. Offers shall be prepared in German or English. Unless otherwise agreed in writing, the supplier shall be obliged to maintain the offer for a period of 6 weeks starting from the date of the offer. An order shall always be regarded as acceptance of the supplier's offer of a contract.
- 2.2 Offers and quotations shall be binding and shall be submitted at no cost to FERCHAU.

## 3. Orders / conclusion of contract

- 3.1 Agreements and orders shall only be binding on FERCHAU if they are issued in writing or are confirmed in writing after having been issued verbally or by telephone.
- 3.2 No claims arising from verbal or telephone orders, information, promises, etc. may be asserted against FERCHAU. These verbal statements shall only be binding if they are confirmed in writing by FERCHAU or if it is proved that FERCHAU waived the written form requirement.

## 4. Delivery / default

- 4.1 The agreed delivery and performance dates shall be binding on the supplier. The delivery date shall be regarded as the date of arrival of the consignment at the delivery address stipulated by FERCHAU. If the supplier delays delivery / performance, FERCHAU shall be entitled to demand compensation amounting to 0.2%, but at most 5% of the value of the agreed consignment for each working day of the delay. This provision shall also apply if FERCHAU withdraws from the contract. FERCHAU shall reserve the right to enforce a claim for this default compensation until such time as the goods are paid in full. Any legal claims in such a case shall not be affected.
- 4.2 FERCHAU shall be entitled to offset any related contractual penalty against claims by the supplier.
- 4.3 The necessary shipping documents shall be enclosed with every consignment.

- 4.4 In the case of incomplete, incorrect or late arriving shipping documents, the supplier shall bear the resulting consequences.
- 4.5 Delivery conditions differing from the agreements shall only be permitted with the prior approval of FERCHAU.
- 4.6 Deliveries shall be made with proper packaging free delivery address.
- 4.7 If the supplier has agreed to install or assemble the delivery item, he shall pay – subject to any different conditions – all necessary incidental costs such as travelling expenses, provision of tools, etc.
- 4.8 If the scope of supply of the product includes software plus documentation, FERCHAU shall be entitled to use them in a legal framework (§ 69a et seq. of the German Copyright Act) and shall also have a utilisation right to the extent required for contractual use of the product. The supplier shall give FERCHAU the express right to make a backup copy.

## 5. Obligation to provide information

The supplier shall immediately inform the ordering branch / department of FERCHAU in writing about delays in delivery, the reasons for these delays and their duration. Any claims by FERCHAU against the supplier shall not be affected.

## 6. Exemption from acceptance

If FERCHAU is prevented from accepting the delivery item on account of industrial disputes or force majeure, the company shall be exempt from the obligation of prompt acceptance during this period.

## 7. Passing of risk

In the case of sale to destination according to the buyer's instructions, the risk of loss of the goods / services shall pass to FERCHAU after delivery to the agreed unloading point.

In the case of a work performance contract, the risk shall remain with the supplier until all the goods / services have been accepted in full by FERCHAU.

## 8. Delivery quantities

The supplier shall only be permitted to deliver the quantity ordered by FERCHAU. Different quantities shall only be accepted by FERCHAU if this has been expressly agreed in writing. The supplier shall be obliged to provide all necessary accompanying documents, consignment notes, supplier declarations, test reports and other documents in good time at his own expense. Where acceptance of the goods depends on complete documentation, FERCHAU shall not be in default of acceptance if the related documents are not provided promptly by the supplier or if FERCHAU did not have a reasonable period of time to inspect them.

## 9. Partial deliveries

In the case of partial deliveries of contractually agreed goods / services, performance shall only be deemed to have been effected by the supplier if the goods / services have been supplied in full. The provisions of § 363 of the German Civil Code shall not apply.

The supplier shall pay the additional costs for transport, packaging, etc., which are incurred as a result of partial deliveries.

FERCHAU shall be entitled to offset any additional costs against claims by the supplier.

The partial deliveries shall not be regarded as a complete transaction. All claims by FERCHAU regarding contractually agreed goods / services shall not be affected by partial deliveries, especially not in connection with liability for material defects.

In the case of call-off orders, the supplier shall be obliged to provide all call-off quantities in such a way that he can observe the delivery date as a fixed date.

## 10. Quality and quality tests

If certain qualities or quality categories are agreed in relation to the provision of goods and services, they shall be regarded as an agreed state.

## 11. Prices

All prices shown in contract offers shall be regarded as fixed prices. Unless otherwise agreed in writing, prices shall be free works duty-paid (DDP according to Incoterms 2000), including packaging, plus the valid rate of value-added tax.

## 12. Order confirmations, invoices, delivery notes and notices of dispatch

Order confirmations and invoices shall be sent to FERCHAU by separate post; they shall not be enclosed with the goods. Delivery notes shall be enclosed with the goods.

In addition to a precise description of the scope of supply – goods, type and quantity – all documents shall show, in particular, order numbers and the name of the orderer.

Direct deliveries to customers of FERCHAU shall be carried out, in principle, with neutral advertising.

## 13. Tools, documents and drawings

The supplier shall be obliged to carefully handle the tools, test equipment, documents, plans, samples, drawings, data carriers, etc. that are supplied by FERCHAU for the purpose of realising the order. The supplier shall also treat these tools, etc. as confidential. The supplier shall have no right of retention whatsoever to these tools, etc.

The supplier may only pass on these tools, etc. to third parties for use in accordance with the terms of the contract.

If FERCHAU incurs damage as a result of non-compliance with this provision, the supplier shall be obliged to pay compensation.

#### **14. Liability for material defects**

- 14.1 The supplier shall furnish a guarantee to the effect that all deliveries comply with the contract, all other legal regulations and EU guidelines relating, for example, to workmanship, accident prevention and environmental protection in the version applying at the time of delivery, and the latest state of the art.
- 14.2 The liability period for material defects shall be 24 months starting from the date of commissioning or final technical acceptance of the goods by FERCHAU.  
In the case of deliveries where commissioning or final technical acceptance is not scheduled, the guarantee period shall also be 24 months. However, it shall start on the delivery date.
- 14.3 In the case of goods which are purchased by FERCHAU for resale, the liability period for material defects shall start on the date of commissioning or final technical acceptance by the end customer.  
In the case of goods where commissioning or final technical acceptance is not carried out, the liability period for material defects shall begin on the date of delivery to the end customer. However, it shall end at the latest 36 months after delivery to the dispatch address stipulated in the contract.
- 14.4 In the case of faulty delivery, FERCHAU shall be entitled to enforce its legal claims within the liability period for material defects.
- 14.5 The supplier shall pay costs which arise due to faulty delivery of the subject of the contract, especially transport costs, travelling expenses or labour costs.
- 14.6 In the case of rework of an unreasonable extent, FERCHAU either shall be entitled to enforce legal liability claims for material defects or shall have a right to a replacement delivery free of charge.
- 14.7 If the supplier fails to comply with the request to rectify a defect within a reasonable period of time, FERCHAU shall be entitled either to carry out the required work itself or arrange for the work to be performed by a third party. The costs in this case shall be paid by the supplier.  
FERCHAU or a third party commissioned by FERCHAU may take action, without prior agreement and at the supplier's expense, to rectify minor defects, prevent disproportionate losses or avert dangers to operational safety at FERCHAU or its customers. The supplier shall be informed immediately about the reasons and nature and extent of the measures. The material defects liability obligation shall not be affected.

- 14.8 The liability period for material defects shall be suspended between notification of the defect and its elimination or up to any refusal on the part of the supplier to satisfy the material defects liability claims. In the case of parts that have to be replaced or reworked, the liability period for material defects shall begin again at the time of restoration of the contractual, trouble-free use of the goods.
- 14.9 FERCHAU shall not waive the above-mentioned claims by accepting and using the goods or approving, for example, documents and drawings.
- 14.10 Unless otherwise agreed, the goods shall be deemed to have been inspected immediately if the inspection is carried out within 5 working days after delivery.  
The obligation to submit an immediate complaint shall be deemed to have been fulfilled by FERCHAU if the supplier is notified within 10 working days after discovery of the defect.

#### **15. Product liability**

If a third party asserts a claim against FERCHAU due to product liability caused by a defect in the contractual goods delivered by the supplier, the supplier shall be obliged to release FERCHAU from these claims and pay all related costs and expenses, including the costs of any legal action. Moreover, legal regulations shall apply.

#### **16. Industrial property rights of third parties**

- 16.1 The supplier shall give an assurance to the effect that the goods are free of third-party industrial property rights and shall be obliged to release FERCHAU from all damages and costs arising from non-compliance with this assurance or prohibition of use of the goods by third parties.
- 16.2 Claims relating to these defects shall become statute-barred 10 years after delivery.

#### **17. Payment conditions**

- 17.1 The term of payment shall commence when the goods are delivered, but at the earliest on receipt of a proper invoice and not before the agreed delivery date.  
If no special term of payment has been agreed in writing, payment shall be made either within 14 days with deduction of 3% discount or net within 30 days.  
Payment shall be made subject to checking of the invoice.
- 17.2 The right to exercise reservation of proprietary rights shall only be possible through prior withdrawal from the contract.

#### **18. Confidentiality / advertising**

- 18.1 All drawings and other technical documents handed over to the supplier for the purpose of effecting orders shall remain the property of FERCHAU. These documents shall be automatically returned to FERCHAU as soon as the order has been executed.
- 18.2 The documents may only be used to the extent approved by FERCHAU and may not be copied or passed on to third parties without prior written approval.
- 18.3 Products which are manufactured according to documents prepared by FERCHAU, for example drawings, models, etc., or on the basis of confidential information or produced tools may not be used by the supplier nor offered or supplied to third parties.
- 18.4 The supplier may only make reference in his advertising to business relations with FERCHAU with the written approval of the latter.

#### **19. Place of jurisdiction and applicable law**

- 19.1 Place of jurisdiction shall be Gummersbach, Germany. However, FERCHAU shall also be entitled to enforce its claims at the general place of jurisdiction of the supplier.
- 19.2 The law of the Federal Republic of Germany shall apply to mutual legal relations to the exclusion of the United Nations Convention on the International Sale of Goods (CISG).

#### **20. Exculpatory clause**

Should one of the provisions of these additional conditions be or become invalid or impracticable, the validity of the other provisions shall not be affected. The invalid or impracticable provision shall be replaced by a provision which comes as close as possible to the legal and economic purpose of this provision.

#### **FERCHAU Engineering GmbH**

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