

1. Area of Application

Unless expressly agreed upon differently, these General Terms and Conditions for Purchasing shall apply exclusively for any and all contract declarations, deliveries and services of FELDER's contract partner (hereinafter referred to as "Supplier") to FELDER GMBH (hereinafter referred to as "FELDER"), as well as for future business with Supplier; it shall be considered to be expressly agreed upon that other General Terms and Conditions, in particular those of Supplier, shall not become subject of the contract, not even by way of acceptance of the contractually agreed upon subject of delivery or by the complete payment for them. These Terms and Conditions shall not, however, apply to Consumers within the meaning of Sec. 13 BGB [Bürgerliches Gesetzbuch - German Civil Code]. Supplier's General Terms and Conditions shall not apply unless FELDER has agreed in writing that they shall apply.

2. Conclusion of the Contract

Supply Agreements, their modifications and/or supplements shall be in writing to be valid. Supplier's quotes shall meet FELDER's inquiries, requirements, specifications, etc. as well as the statutory and other general requirements and quality standards, or include express notes regarding deviations. Supplier shall inform FELDER ahead of time in case Supplier has knowledge of differing country-specific requirements, regardless of whether they are statutory or related to quality. This shall also apply in case technical further developments were not taken into consideration in the inquiry. The quotes shall be free of charge for FELDER.

FELDER shall consider an order binding for 10 business days after it was sent. Calls for deliveries shall become binding if Supplier does not object within 5 business days from date of receipt. Prior to execution of a delivery, FELDER may, at any time, request a change with respect to the deliverable, the quantity or the execution of the items to be delivered unless this would be unreasonable for Supplier. For any effect this may have on costs or schedules, the parties shall arrive at a mutually suitable agreement. Calls for deliveries always may also be transmitted by remote data transfer.

3. Prices and Payment Terms

The prices listed in the order shall be binding and shall be construed as net each, meaning that they do not include the statutory value added tax. Provided that nothing different has been agreed upon in writing, they shall include any and all of Supplier's ancillary services, in particular packaging, transport insurance (in addition to traffic liability insurance), mill test report 2.2 in accordance with EN 10204:2005 as well as free delivery to the business site of FELDER or the agreed upon delivery location.

Provided that nothing different has been agreed upon, FELDER shall pay invoices according to the delivery date, the delivery and receipt of invoice on the 25th of the month that follows the delivery with a discount of 3%. Supplier shall be entitled to offsetting or retention only if Supplier's counterclaims are undisputed or have been determined to be final and absolute. Any right to retention of Supplier shall be limited to claims arising from the respective specific contract. Any assignment to or inclusion of claims against FELDER by third parties shall be expressly excluded unless they arise from deliveries with extended reservation of title by Supplier's sub-suppliers.

4. Deliveries, Delivery Schedules and Transfer of Risk

Supplier shall deliver the deliverables and services to be delivered to FELDER's business site, said deliverables and services to be of its own production. A partial delivery and/or service as well as the utilisation of sub-suppliers shall not be allowed without FELDER's approval. Unless FELDER performs the transport itself, the risk shall be transferred to FELDER, independent of the method of shipment, upon handover of the goods to FELDER at FELDER's site of business or at the agreed upon delivery location.

In case of the delivery of metals, metal products and chemicals, a batch number shall be mandatory for each line item of the bill of delivery. If this is missing, FELDER shall be entitled to a lump sum in the amount of EUR 100 as reimbursement for having to do the registration itself.

For each delivery of metals and metal products, Supplier shall provide FELDER free of charge with a mill test report 2.2 in accordance with EN 10204:2005, to be included with the delivery.

The delivery deadline specified in the order shall be computed from the day of ordering and shall be binding. It shall be fulfilled when the goods are received at FELDER or at a delivery location specified by FELDER, in case of work performed with the day of acceptance. In case of delayed delivery due to Supplier's fault, Supplier shall reimburse FELDER the additional costs/damages caused by the delay through a lump sum payment in the amount of 10% of the total sum for the contract unless FELDER proves a higher expense or if Supplier proves lesser expense or damages. Further statutory claims shall remain unaffected by this.

If Supplier does not deliver within the delivery period, FELDER may provide Supplier with a grace period of 14 days. In this case, FELDER shall be entitled, upon unsuccessful expiration of the grace period, to withdraw from the contract through written declaration and to demand compensation for damages. In this case, the compensation for damages shall amount to 0.2% of the total sum of the contract, however, in total no more than 20% of the contractually agreed upon remuneration, in case of services billed by actual expenditures 20% of the services not yet performed, unless FELDER proves higher damages or Supplier proves lower damages.

The rights to the deliveries and services shall belong to FELDER exclusively.

5. Reservation of Title

If FELDER provides Supplier with items, FELDER shall retain title to said items. They shall only be used for FELDER's order. Supplier shall perform processing and conversions for FELDER. In case of processing or utilisation, FELDER shall acquire joint ownership in the new item in the amount of the value of the item provided relative to the other processed items at the time of processing. Supplier shall store the joint property free of charge for FELDER. Supplier shall include FELDER in its current business insurance or in the business insurance to be purchased (against the risks, e. g., fire, burglary, etc.) for the goods provided and for the goods subject to reservation of title. Supplier shall herewith assign to FELDER any direct claims against the insurer.

In the event that Supplier is in default with payments or if Supplier violates its obligations arising from the reservation of title, FELDER shall be entitled to demand that the items that were supplied be surrendered, and shall be free, upon written announcement, to make free use of them in any way it deems best, taking into account the contractual consideration.

For the period a reservation of title is in place, Supplier shall not be authorised without prior written approval by FELDER, to sell, encumber, assign as surety, rent or in any other form or fashion relinquish or change the items supplied in a manner that would be capable of affecting the surety purpose intended by FELDER. Supplier shall notify third parties of the reservation of title if said third parties access the items, in particular seize or claim a business lien, and [Supplier] shall immediately notify FELDER of this. Supplier shall bear the costs of annulling such access and for any recovery of the items.

6. Confidentiality

Supplier shall agree to treat as confidential any and all business and technical details that Supplier gains knowledge of due to its business relations with FELDER. Documents, information, samples, patterns, models, tools and other means of manufacturing which Supplier receives from FELDER shall remain property of FELDER. Even beyond the duration of the contract, Supplier shall keep these confidential and shall neither record nor use and/or provide them to third parties, irrespective of the form they are in, without FELDER's approval - unless necessitated for achieving the contract's purpose. This shall apply in particular to products which are manufactured based on these documents. Supplier shall transfer these obligations to its staff, representatives and sub-suppliers. Any and all documents, including copies, duplicates, etc., shall be returned at the expiry of the contract at Supplier's cost and risk. A right of retention to this shall be excluded.

Models, matrixes, stencils, samples, tools and other means of manufacturing as well as confidential information that was provided to Supplier by FELDER or for which FELDER paid in part or in full shall only be utilised for deliveries to third parties upon prior written approval by FELDER.

If Supplier violates any of these confidentiality agreements, a lump sum compensation for damages in the amount of EUR 50,000.- shall be agreed upon without a specific proof of damages, notwithstanding further claims, such as to cease, etc. The compensation for damages shall become due once the violation has been established legally.

7. Quality and Documentation

ISO 9001 in the version that is valid at the time the contract is concluded shall apply as a minimum quality standard. For its deliveries, Supplier shall comply with the well-known laws of engineering, safety regulations, the agreed upon technical data as well as all applicable statutory rules and regulations. Product information, etc., handed out by Supplier shall be construed as a promised feature. Changes to the delivery item shall require FELDER's prior written approval. Supplier shall continuously check the quality of the delivery items. The contract partners shall inform each other regarding opportunities for quality improvement.

If there is no firm agreement between Supplier and FELDER with respect to type and scope of checks, FELDER shall be willing, upon Supplier's request and within the limitations of its knowledge, experience and options, to discuss the checks with Supplier to determine the respective necessary state of inspection technology. Furthermore, FELDER shall inform Supplier upon written request of the relevant safety rules and regulations.

The inspection reports prepared by Supplier in accordance with EN 10204:2005 shall be stored for ten years and shall be presented to FELDER upon request. Supplier shall be required to obligate sub-suppliers to the same extent within the scope of what is allowed by law. If customers of FELDER request insight into the production process and FELDER's test documents, Supplier shall, upon FELDER's request, provide them with the same rights at its facility and shall provide any and all reasonable support.

8. Property Rights

Supplier shall be liable for claims regarding violations of property rights and property right applications that arise from the contractual use of the delivery items. Supplier shall hold harmless FELDER and its customers from all claims arising from the utilisation of such property rights.

This shall not apply if supplier manufactured the delivery items based on drawings, models or other descriptions equivalent to them provided by FELDER or on the basis of other information provided by FELDER and did not know or, in connection with the products developed by Supplier, could not know that this would result in a violation of property rights.

The contract partners shall mutually agree to inform each other immediately upon gaining knowledge of any risks of violation and alleged cases of violation and shall provide each other in these cases with the opportunity to counter such claims by mutual agreement.

Upon request by FELDER, Supplier shall inform FELDER in writing of the utilisation of its own publicised and non-publicised property rights and of licensed property rights and property right applications regarding the delivery item.

9. Liability for Defects

FELDER shall be required, in accordance with Sec. 377 HGB (Handelsgesetzbuch - German Commercial Code) to inspect goods/services for obvious quality and quantity deviations within a reasonable period of time after receiving the delivery. The complaint shall be construed as having arrived at Supplier's on time if Supplier receives it within a period of 21 calendar days from the documented delivery date of the goods/services at FELDER.

In return, Supplier shall be required to inspect the goods to be shipped for freedom from defects within the meaning of the contractual agreement and shall assure FELDER that it has provided goods that are 100% free of defects.

Supplier shall guarantee in this context that its goods/services, according to its knowledge, are free of third-party rights and that their utilisation by FELDER in accordance with the contract does not infringe on third party property rights. This shall not apply to those items and documents provided by FELDER.

Provided nothing different was agreed upon, the following shall apply: in accordance with Item 4 of these Terms and Conditions of Purchasing, the claims for defects shall expire 24 months after the delivery date. Sections 478, 479 BGB (Bürgerliches Gesetzbuch - German Civil Code) shall apply. Supplier shall also have opportunity to remedy the defect(s) in case of defects that were determined prior to manufacturing (processing or installation), unless FELDER does not consider that to be reasonable for it. If supplier is not able to remedy this or does not act upon this immediately, FELDER shall be entitled to withdraw from the contract without setting an additional grace period and shall be entitled to return the goods at Supplier's cost and risk. In urgent cases, FELDER shall be entitled, upon coordination with Supplier, to remedy defects itself or through third parties at Supplier's expense. The right to claims for damages shall remain unaffected. If goods from more than three deliveries within one year are defective, FELDER shall be entitled to withdraw from further not yet fulfilled contracts/deliveries and to that extent also demand claims for damages due to non-performance. The assertion of additional claims shall remain unaffected by this.

Supplier shall support, as far as Supplier's products are involved, FELDER free of charge in the defense against any and all claims arising from product and producer liability and shall hold harmless FELDER of these as well as any and all other costs arising from the defense against such claims. For this case, Supplier shall purchase a product liability and recall insurance, the coverage of which shall be sufficient to cover the potential financial consequences of a civil liability suit due to a product liability case and/or a recall of one or all products. This insurance shall always be maintained at its full scope.

Supplier shall provide proof of insurance without being prompted by means of a confirmation from the insurer prior to concluding the contract with FELDER and by presenting it annually without prompting in case of regular business relations upon the recurring due date of the insurance policy by means of a current confirmation.

Claims by the Supplier for damages shall be excluded unless they arise from damages to life, body or health that FELDER is responsible for or other damages that were caused by gross negligence or wilful breach of duty by FELDER, its legal representatives or its vicarious agents and are typical of such contract and foreseeable or were founded in wilful behaviour. FELDER shall be liable if and to the extent that damages occurring are covered by FELDER's insurance and only in the amount of the insurance coverage available for the damage event. For measures taken by FELDER to mitigate damages (e. g. recall), Supplier shall be jointly liable to the extent of Supplier's share of causing them.

10. Duration of Contract and Termination

Permanent obligations shall begin with the signature and shall be deemed to be valid for one year from the date of the first call of a partial service, unless something else was agreed upon. There shall be no automatic extension. Furthermore, a contract shall end automatically upon expiration of the agreed upon duration, without requiring a separate termination notice.

The extraordinary termination for cause without prior notice shall remain unaffected. One of the important reasons FELDER considers to be cause for terminate shall be, but not be limited to, the filing of bankruptcy proceedings against Supplier's assets as well as Supplier's performance delays of more than one month.

11. Other

Transfers to third parties of Supplier's rights and obligations arising from contracts concluded between FELDER and Supplier shall require written approval by FELDER to become effective.

If Supplier stops providing its services or if bankruptcy proceedings are filed against its assets or if an out-of-court settlement is filed, then FELDER shall be entitled, independent of the regulation under Item 10, para. 2, to withdraw from the non-fulfilled part of the contract.

12. Place of Performance, Place of Jurisdiction, Choice of Law

The law of the Federal Republic of Germany shall be exclusively applicable. The agreement of the United Nations dated April 11, 1980 regarding Contracts regarding the International Sale of Goods (CISG) shall expressly be not applicable even if Supplier's place of business is abroad.

Place of Performance for the services of the contract partners and exclusive Place of Jurisdiction in case of disputes, no matter for which legal reason, shall be Oberhausen (Germany). FELDER does, however, reserve the right to also file suit at Supplier's location. As a courtesy, these terms and conditions have been provided in English as well as German. In the event of an inconsistency the original version (German) shall prevail.

13. Severability Clause

A potential nullity of individual contract clauses shall not affect the effectiveness of the other clauses. The contract partners shall strive to replace the void provision with one that is legally valid and for the most part equivalent to the meaning and purpose of the void provision.