

## Terms and conditions - Ferdinand Gross GmbH & Co. KG

### § 1 Scope of application and general provisions

- The following terms and conditions (hereinafter: "terms and conditions") apply to all our business relationships with our customers (hereinafter: "the Buyer"). The terms and conditions apply only if the Buyer is an entrepreneur as defined in § 14 of the German Civil Code (BGB), a legal entity under public law or a public-law special fund.
- The terms and conditions shall apply in particular to contracts for the sale or the supply of movable items (hereinafter also: "goods"), without regard to whether we produce the goods ourselves or buy them from suppliers (§§ 433, 650 BGB). Unless agreed otherwise, the terms and conditions in the version valid at the time of the Buyer's order, or at least in the written form most recently provided to the Buyer, shall also be deemed a framework agreement for future contracts of the same type, without us having to refer to them again in each case.
- Our terms and conditions shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Buyer are only part of the contract if and to the extent that their validity is expressly agreed with us in writing. This approval requirement shall apply in any case, for example, even if we fully carry out the delivery to the Buyer in the knowledge of the general terms and conditions of the Buyer.
- Individual agreements agreed with the Buyer in specific cases shall take precedence over these terms and conditions in any case, including ancillary agreements, amendments and changes. A written contract or our written confirmation is authoritative for the content of such agreements, subject to proof to the contrary.
- Legally relevant declarations and notifications of the buyer in relation to the contract (such as deadlines, defects, declarations of withdrawal or reduction) are to be given in writing, i.e. in written or written form (e.g. letter, e-mail, fax). Legal formalities and other evidence, especially in the case of doubts as to the legitimacy of the declarant, shall remain unaffected.
- References to the applicability of statutory provisions are for guidance only. However, the statutory provisions shall apply even without such guidance, insofar as they are not directly changed or expressly excluded in these terms and conditions.

### § 2 Offer and conclusion of contract

- Our offers are non-binding and subject to change. This also applies if we have given the Buyer catalogues, technical documentation (e.g. drawings, plans, calculations, calculations, references to DIN standards), other product descriptions or documents, also in electronic form, to which we reserve rights of ownership and copyright.
- An order of goods by the Buyer is considered a binding contract offer. Unless otherwise stated in the order, we are entitled to accept the contract offer within 3 weeks of its receipt by us.
- The acceptance can be declared either in writing (e.g. by the order confirmation) or by delivering the goods to the Buyer. If deliveries are made without confirmation, the invoice or the delivery note shall be deemed confirmation of the order on the basis of the terms and conditions contained therein.

### § 3 Prices and payment terms

- Unless otherwise agreed in individual cases, our current prices and surcharges at the time of the conclusion of the contract shall apply. The prices apply ex warehouse in Leinfelden. Prices are stated in euro excluding VAT, packaging, customs duties and fees for export shipments, and other public charges. If the agreed or specified delivery time is more than four months after conclusion of the contract, we are entitled to charge the prices and surcharges valid at the time of delivery. For part-pick quantities, we reserve the delivery and calculation of original packages or the bringing a reasonable minimum quantity surcharge.
- In the case of mail order purchases (§ 5 (1)), the Buyer shall bear the transport costs from the warehouse in Leinfelden and the cost of transport insurance required by the Buyer where applicable. If we do not invoice for the transport costs actually incurred in each individual case, a transport expenses lump sum (excluding insurance) according to our respective shipping cost chart is deemed to be agreed. Any duties, fees, taxes and other public charges shall be borne by the Buyer.
- Our invoice amounts are due and payable within 10 days from invoicing and delivery or acceptance of the goods. The receipt of payment by us depends on the date of payment. Cheques are only valid as payment upon redemption. Should the Buyer be granted a discount, a 2% discount may be deducted from that part of the invoiced amount which does not relate to services within the agreed payment period, provided all our older claims have already been fully discharged by the Buyer.
- The Buyer is in default upon expiry of the above payment deadline. Interest is to be paid on the purchase price at the respective applicable statutory default interest rate during the period of default. We reserve the right to claim further damages caused by delay. For traders, our claim to the regular interest payable on due date (§ 353 of the German Commercial Code (HGB) remains unaffected.
- In the case of default of payment, we are entitled to refuse further deliveries or to perform only against cash in advance and to make all outstanding invoices, including deferred invoices, due for immediate payment.
- The Buyer is only entitled to set-off or retention insofar as its claim is legally established or undisputed. In case of defects in the delivery, the Buyer's rights, in particular § 7 (7) Sentence 2 of these terms and conditions, remain unaffected.
- If it becomes evident after the conclusion of the contract that our claim to the purchase price is endangered by the Buyer's inability to pay (e.g. through application for opening of insolvency proceedings), we are entitled according to the legal regulations to refuse performance and - after setting a deadline where appropriate - (§ 321 BGB) to withdraw from the contract. In the case of contracts for the manufacture of unacceptable items (custom-made products), we can announce the withdrawal immediately; the statutory regulations concerning the dispensability of the deadline shall remain unaffected.

### § 4 Delivery time and default of delivery

- The delivery time is agreed individually or specified by us upon acceptance of the order. If the shipment of the goods has been agreed, delivery refers to the time of delivery ex warehouse in Leinfelden to the forwarder, carrier or other third party commissioned with the transport. In the case of direct delivery from the manufacturer, the delivery times refer to the departure from the manufacturer.
- Insofar as we cannot keep to binding delivery periods for reasons that we cannot be held responsible for (non-availability of the service), we shall inform the Buyer thereof immediately and at the same time communicate the expected new delivery time. If performance still cannot be made within the new delivery period, we shall be entitled to withdraw from the contract, in part or in full. We shall immediately refund any consideration already rendered by the Buyer. Cases of non-availability in this sense include in particular the non-timely delivery by our own and the Buyer's suppliers, if we have concluded a congruent hedge transaction, if neither we nor our suppliers are at fault, or if we are not obligated to make procurement in a specific case.
- If the Buyer is in default of acceptance, omits an act of participation or if our delivery is delayed for other reasons, for which the Buyer is responsible, we are entitled to demand compensation for resulting damage, including additional expenses (such as storage costs). We charge lump sum compensation for this in the amount of 0.5% of the invoice amount per week, starting on the delivery date or - if there is no delivery date - starting upon notification of the readiness for dispatch of the goods. Proof of a higher damage and our statutory rights (in particular compensation of additional expenses, suitable compensation, termination) shall remain unaffected; however, the lump sum cannot be set off against further monetary claims. The Buyer is entitled to prove that we suffered no damage at all or only a substantially lower damage than the above lump sum.
- The Buyer's rights in accordance with § 8 of these terms and conditions and our own statutory rights, in particular in the case of an exclusion of the duty of performance (e.g. due to impossibility or unreasonableness of performance and/or supplementary performance), shall remain unaffected.

### § 5 Delivery, transfer of risk, acceptance, delay in acceptance and withdrawal

- Delivery is made ex warehouse in Leinfelden, which is also the place of performance for the delivery and of any supplementary performance. Upon the Buyer's request and at its expense, the goods shall be sent to another destination (mail order purchase). Unless otherwise agreed, we shall be entitled to determine the method of transport (in particular the transport companies, shipping method, packaging).
- The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer at the latest upon delivery. In the case of mail order purchases, however, the risk of accidental loss and accidental deterioration of the goods and the risk of delay of delivery of the goods shall pass to the forwarding agent, the carrier or the person or entity selected to carry the shipment upon transfer to the shipper. Insofar as a formal acceptance procedure has been agreed, this shall be determinative for the transfer of risk. In addition, the statutory provisions of the law on contracts for goods and services shall apply correspondingly for an agreed acceptance procedure. Default of acceptance by the Buyer shall be deemed equivalent to acceptance or transfer of the goods. Even in the event that carriage-free delivery has been agreed or in the case of drop shipments, shipment takes place at the Buyer's risk.
- If the Buyer is in default of acceptance, omits an act of participation or if our delivery is delayed for other reasons, for which the Buyer is responsible, we are entitled to demand compensation for resulting damage, including additional expenses (such as storage costs). We charge lump sum compensation for this in the amount of 0.5% of the invoice amount per week, starting on the delivery date or - if there is no delivery date - starting upon notification of the readiness for dispatch of the goods. Proof of a higher damage and our statutory rights (in particular compensation of additional expenses, suitable compensation, termination) shall remain unaffected; however, the lump sum cannot be set off against further monetary claims. The Buyer is entitled to prove that we suffered no damage at all or only a substantially lower damage than the above lump sum.
- Partial deliveries are permitted to a reasonable extent if the partial delivery can be used by the Buyer within the intended purpose of the contract, the delivery of the remainder of the goods ordered is secured and this does not cause significant additional effort or additional costs for the Buyer (unless we agree to take over these expenses).
- Changes in the technical design of our goods remain reserved without special notice of the Buyer, insofar as the value and the availability of the goods offered is not affected by this. We reserve the right to exceed or fall below the order quantity by 10% for special designs.
- We shall insure the goods against theft, breakage, transport, fire and water damage or other insurable risks only on the express request of the Buyer and at its expense.
- We shall not take back transport packaging and all other packaging in accordance with the packaging ordinance; it shall become the property of the Buyer; Euro pallets are the exception to this.
- Returns require our prior written consent. We reserve the right to make a deduction of at least 25% of the invoice value in addition to the transport charges if defect-free goods are returned.

### § 6 Retention of title

- Until the complete payment of all our current and future claims arising from the purchase agreement and an ongoing business relationship (secured claims), we reserve ownership of the goods sold.
- The goods subject to retention of title may neither be pledged to a third party nor transferred as collateral before full payment of the secured claims. The Buyer must inform us immediately in writing if an application is filed for opening insolvency proceedings, or insofar as actions of third parties (e.g. seizures) are made regarding the goods belonging to us, or if the goods are damaged or destroyed. Insolvency trustees, persons authorized to garnish claims, enforcement officers or other third parties accessing the property must be informed of our other rights.
- In the event that the Buyer breaches the contract, in particular in the case of non-payment of the purchase price due, we are entitled to withdraw from the contract according to the statutory provisions or/and to demand the return of goods on the basis of the retention of title and rescission. The obligation to surrender does not include the declaration of withdrawal at the same time; we are entitled to demand only the goods and to reserve the right to rescind the goods. If the Buyer does not pay the purchase price owed, we may assert these rights only if we have previously unsuccessfully set a reasonable deadline for the Buyer to pay or if setting such a deadline is not necessary according to the statutory regulations.
- Unless revoked in accordance with c) below, the Buyer is authorized to sell on the goods subject to retention of title in the ordinary course of its business, and/or to process such goods. In this case, the following provisions shall apply supplementarily:
  - The retention of title extends to the products resulting from processing, mixing or combining our products to their full value; we shall be deemed the manufacturer. In the case of processing, mixing or combining with goods third parties, if such third parties' ownership rights remain, we shall acquire co-ownership in the ratio of the invoice value of the processed, mixed or combined goods. For the remainder, the same shall apply for the resulting product as for the goods delivered under retention of title.
  - As of now, the Buyer assigns the claims arising from the resale of the goods or of the resulting product against third parties to us in full or in the amount of our any co-ownership share as outlined in the preceding paragraph as collateral. We hereby accept the transfer. The Buyer's obligations referred to in § 6 (2) shall also apply in respect of the assigned claims.
  - The Buyer retains the right to collect on the claim, as do we. We undertake not to collect on the claim as long as the Buyer complies with its payment obligations to us, that is, no other deficiency of performance, and we do not assert our retention of title through exercising a right in accordance with Subsection 3. If this is the case, however, we may demand that the Buyer informs us of the assigned claims and their debtors, provides all information necessary to collect on the claims, turns over the relevant documentation, and notifies the debtors (third parties) of the assignment. We are also entitled in this case to revoke the Buyer's authorization to sell on and to process the goods subject to retention of title.
  - If the realizable value of the collateral exceeds our claims by more than 10%, we shall release the collateral at our discretion at the request of the Buyer.

### § 7 Warranty claims of the Buyer

- The statutory regulations apply to the Buyer's rights in the case of material and legal defects (including incorrect delivery and short delivery and improper installation or poor assembly instructions), unless otherwise determined in the following. The special statutory regulations for final delivery of the unprocessed goods to a consumer shall remain unaffected in all cases, even if they have further processed them (supplier recourse in accordance with § 478, 479 BGB). Claims arising from supplier recourse are excluded if the defective goods were further processed by the purchaser or another entrepreneur, eg. by incorporation into another product.
- The basis of our liability for defects is above all the agreement relating to the quality of the goods. All product descriptions and manufacturer information which are the subject of an individual contract, or which were published by us, (particularly in catalogues or on our Internet homepage) at the time the contract was concluded shall be deemed to be an agreement relating to the quality of the goods.
- If the properties are not agreed, it is to be assessed whether a defect exists or not according to the statutory regulations (§434 (1) clauses 2 and 3 BGB). However, we accept no liability for public statements made by the manufacturer or any other third parties (e.g. promotional messages) which the Buyer fails to notify us of as decisive for their purchase.
- The warranty claims of the Buyer require that he has fulfilled his statutory duty of inspection and give notice of defects (§§ 377, 381 HGB). For building materials and other goods designated for installation or further processing an inspection must be conducted in any case before such

processing. In any case, obvious defects must be reported in writing within 10 working days from the date of delivery and non-recognizable defects must be reported in writing within the same period from discovery. If the Buyer fails to perform a proper examination and/or report the defect, our liability for non-disclosed defects or defects which are not reported in time or incorrectly indicated defects is excluded in accordance with statutory requirements.

- If the supplied goods are defective, we can choose initially within reasonable period of time whether we shall provide subsequent fulfillment by rectification of the defect (subsequent improvement) or by delivery of faultless goods (replacement delivery). Our right to refuse the chosen type of remedy under the statutory conditions remains unaffected.
- The liability for material defects shall not apply if the Buyer modifies goods delivered or has them changed by third parties without our consent and the rectification of this is impossible or unreasonably difficult. In any case, the Buyer has to bear the additional costs incurred by changing the defect.
- We are entitled to make the subsequent performance owed, dependent on the Buyer paying the purchase price due. The Buyer is, however, entitled to deduct a reasonable portion of the purchase price in proportion to the defect.
- The Buyer has to give us the time required for subsequent performance owed and the opportunity to hand over the contested goods in particular for inspection purposes. In the case of a replacement delivery, the Buyer has to return the defective item to us in accordance with the statutory regulations. Subsequent performance includes neither the removal of the defective item nor the new installation if we were not originally required to perform the installation.
- The expenses required for the purpose of testing and subsequent performance, in particular transport, travel, labour and material costs as well as if necessary removal and installation costs, shall be borne or reimbursed by us in accordance with the legal regulation, if a defect actually exists. Otherwise, we may demand reimbursement for costs incurred as a result of an unjustified demand for defect remediation (in particular testing and transport costs), unless the lack of an actual defect was not discernible to the Buyer.
- In urgent cases, as in the risk of operating safety or to prevent of excessive damage, the Buyer has the right to eliminate the defect itself and to demand compensation from us for the objectively necessary expenses. We are to be informed of such a self-remedy immediately - beforehand if possible. The right of self-remedy does not exist if we would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.
- If subsequent performance has failed or an appropriate deadline for subsequent performance to be set by the Buyer has expired unsuccessfully or is dispensable under the statutory provisions, the Buyer can withdraw from the contract or reduce the purchase price. However there is no right of withdrawal in the case of an insignificant defect.
- Claims on behalf of the Buyer for damages or compensation for wasted expenditures exist only pursuant to § 8, even in the case of defects, and are otherwise excluded.

### § 8 Other liability

- Unless otherwise stated in these terms and conditions, including the following provisions, we shall be liable for violations of contractual and non-contractual obligations in accordance with the relevant statutory regulations
- We are liable for damages in tort - regardless of the legal ground - in the case of intentional acts and gross negligence. In the event of ordinary negligence we shall be liable, subject to statutory limitations of liability, (e.g. diligence in own matters; immaterial breach of duties), only
  - for losses resulting from the injury of life, body or health,
  - for damages resulting from a breach of a material contractual obligation. (An obligation, the fulfillment of which is essential for the proper performance of the contract and on the observance of which the contractual partner regularly relies and may rely);
  - in such a case, however, our liability shall be limited to compensation for foreseeable, typically occurring damages.
- The limitations of liability arising from § 8 (2) also apply in the case of violations of obligations by or on behalf of persons for whose actions we are statutorily liable. They do not apply insofar as we have fraudulently concealed a defect or assumed a guarantee for the condition of the goods, nor to claims of the Buyer under the Product Liability Act (Produkthaftungsgesetz).
- In the case of a violation of an obligation which does not consist of a defect, the Buyer shall only be entitled to withdraw from or terminate the contract if we are responsible for this violation. A free right of termination (in particular in accordance with §§ 650, 648 BGB) is excluded. For the remainder, the statutory requirements and legal consequences shall apply.

### § 9 Statute of limitations

- By way of derogation from §438 (1) No. 3 BGB, the general limitation period for claims based on material defects and legal defects is one year after delivery. If sign-off acceptance has been agreed, the limitation period shall begin upon acceptance.
- If the product is a building or an object, which has been used for a building according to its customary use and has caused the defectiveness of the building (building materials), the limitation period pursuant to the statutory regulations is 5 years from delivery (§ 438 (1) No. 2 BGB). Other special statutory regulations regarding limitation periods shall also remain unaffected (in particular § 438 (1) No. 1, (1) 3, §§ 444, 445b BGB).
- The above limitation periods of the UN CISG also apply to contractual and non-contractual claims of the Buyer based on a defect of the goods, unless the application of the regular statutory limitation periods (§§ 195, 199 BGB) would lead to a shorter limitation period in that specific case. However, the Buyer's claims to compensation for losses in accordance with § 8 (2) Paragraphs 1 and 2 a) and in accordance with the Product Liability Act shall expire exclusively in accordance with the statutory limitation periods.

### § 10 Applicable law, place of jurisdiction and final provisions

- The laws of the Federal Republic of Germany shall apply to these terms and conditions and to all legal relationships between us and the Buyer under exclusion of international uniform law, in particular the UN.
- If the Buyer is a businessman as defined by the German Commercial Code (Handelsgesetzbuch), a legal entity under public law or a special fund under public law, the sole - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Stuttgart. The same shall apply if the Buyer is an entrepreneur within the meaning of § 14 BGB. However, we are in all cases also entitled to take legal action at the place of fulfillment of the delivery obligation in accordance with these terms and conditions or an overriding individual agreement, or at the Buyer's general place of jurisdiction. Overriding legal regulations, in particular regarding exclusive jurisdictions, shall remain unaffected.
- Insofar as the contract or these terms and conditions contain regulatory gaps, legally effective arrangements, which the contract parties would have agreed in accordance with the economic objectives of the agreement and the purpose of these terms and conditions if they had known about the loophole shall be deemed agreed in order to fill these gaps.

Please note: Safety data sheets for our chemical products, technical information, certificates etc. can be found on our website under downloads: [www.schrauben-gross.com](http://www.schrauben-gross.com)

Go directly to downloads: <https://www.schrauben-gross.com/en/downloads.html>

Updated: 16.05.2019

The company is a limited partnership based in Leinfelden-Echterdingen, Register Court Stuttgart HRA 221054. The personally liable partner is Beteiligungsgesellschaft mbH with registered address in Leinfelden-Echterdingen, Register Court Stuttgart HRB 220871.

Managing Directors: Gerald Hering, Thomas Erb