

General Terms and Conditions of Delivery of FIT.technology GmbH



I. Scope of application

1. The legal relationship between the Supplier (=FIT) and the Purchaser in connection with the Supplier's deliveries and/or services shall be governed exclusively by these General Terms and Conditions of Delivery. The mutually agreed declarations in text form shall be decisive for the scope of the deliveries. Deviations from and additions to these terms and conditions must be made in text form and require the consent of FIT and the customer.

2. The Purchaser's general terms and conditions shall only apply insofar as the Supplier has expressly agreed to them in text form. Deviating or supplementary terms and conditions of the Purchaser shall not become part of the contract in whole or in part, even if the Supplier is aware of them, even if they are not expressly objected to in individual cases. The acceptance of deliveries or services as well as payments does not constitute consent. To comply with the text form specified in these General Terms and Conditions of Delivery, transmission by telecommunication, in particular by fax or e-mail, shall suffice.

3. Any granting of rights or inclusion of third parties in the contractual relationship requires the prior consent of the Supplier.

4. In addition to the following terms and conditions, the statutory provisions of the Federal Republic of Germany shall apply. This also applies to legal relationships with foreign clients. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.

II. Conclusion of contract

1. All offers made by the Supplier are non-binding with regard to prices, quantities, delivery conditions and ancillary services, unless expressly stated otherwise in the offer. Contracts shall only be concluded by means of an order confirmation in text form or the actual provision of services and shall be based exclusively on the content thereof.

2. Offers provided to the customer may not be made accessible to third parties unless written permission has been granted by the supplier.

3. Promises, agreements, assurances or guarantees made by employees of the Supplier in connection with the conclusion of the contract shall only become effective upon confirmation in text form by the Supplier.

4. The supplier reserves the right, even after order confirmation, to make minor adjustments to the specification of the offer due to technical or legal reasons as well as future market requirements.

III. Prices, terms of payment, default of payment

1. Unless otherwise agreed, the prices are EX WORKS Lupburg (Incoterms® 2020) plus the applicable value added

tax. Price quotations are only indicative prices until the contract is concluded. The prices are based on the cost factors applicable at the time the contract is concluded.

2. Unless otherwise agreed, payments are due net within 30 days of receipt of the invoice.

3. The payment period shall commence as soon as the delivery has been made in full and the properly issued invoice has been received.

4. If the term of payment is exceeded, the supplier shall charge the statutory default interest (§ 288 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB)) from the date of default. This shall amount to 9 percentage points above the respective base interest rate if the claim is not directed against a consumer. The assertion of further damages caused by default remains reserved.

5. The customer shall only be entitled to rights of set-off or retention if the counterclaims are undisputed, have been legally established or have been expressly recognized by the supplier.

IV. Terms of delivery, delay in performance, partial delivery

1. Compliance with delivery deadlines is subject to the timely receipt of all documents to be supplied by the Purchaser, necessary approvals and releases, in particular of the necessary materials (documents, drawings, images, graphics, software on data carriers), as well as compliance with the agreed terms of payment and other obligations by the Purchaser. If these requirements are not met, the deadlines shall be extended for a reasonable period of time; this shall not apply if the Supplier is responsible for the delay.

2. In the event of a recognizable delay in performance, the customer must be notified immediately and his decision obtained. Delays in performance due to the mode of dispatch shall not entitle the customer to reduce the invoice, refuse acceptance or the like.

3. If the deadline cannot be met due to the events listed in a-d below, the delivery deadline shall be extended accordingly:

a. Force majeure, e.g. epidemics (including pandemics, epidemics) insofar as a risk level of at least "moderate" is defined by the Robert Koch Institute, war, acts of terrorism, riots, transportation bottlenecks or obstacles through no fault of our own, energy and raw material shortages or similar events (e.g. strikes, lockouts, operational disruptions, traffic obstructions),

b. viruses and other attacks by third parties on the Supplier's IT system, insofar as these occurred despite compliance with the usual care in protective measures,

c. obstacles due to German, US-American and other applicable national EU or international regulations of foreign trade law or due to other circumstances for which the supplier is not responsible, or

d. late or improper delivery to the supplier.

4. Both claims for damages on the part of the customer due to delay in performance and claims for damages in lieu of performance are excluded in all cases of delay in delivery, even after expiry of a grace period. This shall not apply in the event of willful, grossly negligent breach of duty by the supplier and in the event of injury to life, limb or health. Withdrawal from the contract in accordance with the statutory provisions is only possible if the supplier is responsible for the delay in performance. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.

5. Delay in delivery does not entitle the customer to withdraw from the contract or to refuse acceptance.

6. Partial deliveries and partial services within the agreed delivery and service times are permissible if this is reasonable for the customer.

V. Shipping conditions, transfer of risk

1. Shipment shall always be EX WORKS Lupburg (Incoterms® 2020), unless otherwise agreed in text form.

2. If, in deviation from clause 1, the goods are dispatched by collection by the Purchaser, the goods shall be handed over without checking the authorization of the appointed collector; this shall not give rise to any claims by the Purchaser against the Supplier due to incorrect handover.

VI. Retention of title

1. The objects of the delivery (reserved goods) shall remain the property of the Supplier until all claims against the Customer arising from the business relationship have been fulfilled. This shall also apply to future and conditional claims. In particular, title shall only pass to the Purchaser if and to the extent that the Supplier is released from all contingent liabilities entered into by the Purchaser in the interest of the Purchaser, in particular in the case of application of the bill of exchange/cheque procedure.

2. The customer is obliged to treat the goods delivered by the supplier with care.

3. The customer may neither pledge nor assign by way of security the goods subject to retention of title owned by the supplier. The resale of the reserved goods delivered under retention of title is generally prohibited.

4. In the context of insolvency and composition proceedings, the purchaser is obliged to identify the reserved goods as the property of the supplier to any third party, e.g. by means of signs, before the proceedings are initiated.

5. As long as the Supplier has a claim, the Supplier shall be entitled to demand information from the Purchaser at any time as to which reserved goods delivered under retention of title are still in its possession and where they are located.

Furthermore, the supplier is entitled to inspect and retrieve these reserved goods at any time.

6. In the event of seizures, confiscations or other interventions by third parties, the Purchaser shall notify the Supplier immediately by telephone and in text form. If a legitimate interest is substantiated, the Purchaser shall immediately provide the Supplier with the information required to assert its rights against the Purchaser and hand over the necessary documents.

7. The treatment, processing or transformation of the reserved goods delivered by the supplier under retention of title shall be carried out by the purchaser without any liabilities arising therefrom. If the goods subject to retention of title delivered by the Supplier are processed with other items not belonging to the Supplier, the Supplier shall acquire co-ownership of the new item in the ratio of the value of the goods subject to retention of title delivered by the Supplier to the other processed items at the time of processing.

VII. Warranty, notice of defects

1. We reserve the right to deviations in the goods with regard to material quality, tinting, dimensions and the like. We also reserve the right to dimensional differences in the goods caused by shrinkage or stretching of the materials used or by the geometry of the data.

2. Deviations in the goods that subsequently arise due to external influences such as weather, light, moisture, etc. shall only give rise to warranty claims if the supplier is responsible for these due to improper work.

3. Goods manufactured according to the customer's designs or data shall only be subject to warranty to the extent that the goods correspond to the documents provided by the customer. Suitability of the goods for the purpose specified by the customer is not guaranteed.

4. The warranty period is one year from the transfer of risk or, if acceptance is required, from acceptance; the same applies to withdrawal and reduction. This period shall not apply if the law prescribes longer periods in accordance with §§ 438 Para. 1 No. 2, 479 Para. 1, § 478 in conjunction with 445 a and § 634a Para. 1 No. 2 BGB or other mandatory statutory provisions. This also does not apply to claims for damages arising from a guarantee, the assumption of a procurement risk and the assumption of a procurement risk within the meaning of § 276 BGB as well as the assumption for the existence of a performance success, injury to life, body or health or from fraudulent, intentional or grossly negligent breaches of duty, breach of essential contractual obligations of the supplier or its vicarious agents as well as other mandatory statutory liability, in particular product liability law.

5. Claims of the purchaser due to a defect can only be asserted if the purchaser has duly and immediately fulfilled his obligations to inspect the goods and give notice of defects in accordance with § 377 of the German Commercial Code (*Handelsgesetzbuch – HGB*). The delivered items must be carefully inspected immediately after delivery to the customer or to a third party designated by the customer. They shall be deemed to have been approved if the Purchaser has not notified the Supplier in writing of a defect with regard to obvious defects or other defects which were recognizable during an immediate,

careful inspection within seven working days after delivery of the delivery item, or otherwise within seven working days after discovery of the defect or the time at which the defect was recognizable to the Purchaser during normal use of the delivery item without closer inspection. The receipt of this notice of defects by the Supplier shall be decisive for the timeliness.

If the complaint is not made or is delayed, the purchaser shall lose his claims for any defects in the purchased item.

6. In the event of a defect, the supplier is initially entitled to choose whether to remedy the defect or to deliver a defect-free item. If the last contract in the chain is a purchase of consumer goods, this reversal of the right to choose shall not apply in accordance with § 478 para. 2 BGB. The supplier shall be given the opportunity to provide subsequent performance (*Nacherfüllung*) within a reasonable period of time. In the case of a replacement delivery, the customer is obliged to return the defective item. If the supplementary performance fails, i.e. in the event of impossibility, unreasonableness, refusal or unreasonable delay of the rectification or replacement delivery, the customer may withdraw from the contract or reduce the purchase price, claim damages or receive reimbursement of expenses in the cases specified in Section VIII. In case of refusal of subsequent performance according to § 439 para. 4 BGB or § 636 BGB, in case of unreasonableness of subsequent performance as well as in the cases of § 281 para. 2 and § 323 para. 2 BGB, it is not necessary to set a deadline for the assertion of damages or for withdrawal.

7. Claims of the customer for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labor and material costs, are excluded insofar as the expenses increase because the object of the delivery has subsequently been taken to a place other than the customer's branch office, unless the transfer corresponds to its intended use.

In the cases regulated in Section 439 (3) BGB, the Supplier shall bear the installation and removal costs of the Purchaser only insofar as this is prescribed by law.

8. Recourse claims of the Purchaser against the Supplier pursuant to § 445 a i.V.m. § 478 BGB shall only exist insofar as the Purchaser has not made any agreements with its customer that go beyond the statutory claims for defects.

9. Warranty claims are excluded insofar as deterioration of the goods is due to natural wear and tear or improper handling of the goods. This applies in particular to such deterioration that occurs due to improper reworking by the customer or unauthorized third parties. Liability for material defects is excluded for defects caused by incorrect handling, improper assembly, installation or further processing, failure to follow operating and/or maintenance instructions or natural wear and tear. A change in the burden of proof to the detriment of the customer is not associated with the above provisions. Any further claims of the customer other than those in this VII. due to a material defect are excluded.

10. VII. shall only apply to the production of prototypes and samples owed to the customer in VII.3. No warranty is agreed for samples and prototypes.

11. Master models and molds manufactured by the supplier shall be stored by the supplier for a maximum of one year from the date of manufacture and then disposed of properly without consulting the customer or obtaining the customer's approval.

VIII. Liability

1. The supplier shall only pay damages for whatever legal reason:

a. in the event of intent or fraudulent misrepresentation in the full amount; in the event of gross negligence or in the absence of a guarantee only in the amount of the foreseeable damage that should have been prevented by the duty of care or the guarantee;

b. In other cases, only from breach of a material obligation if this jeopardizes the purpose of the contract, from delay and impossibility, always limited to typical direct damages foreseeable at the time of conclusion of the contract and limited in amount to the total remuneration of the contract. Essential contractual obligations are obligations whose fulfillment is essential for the proper execution of the contract and on whose compliance the customer relies and may also rely. The Supplier shall not be liable for consequential damages caused by slight negligence, other indirect damages and loss of profit.

2. The objection of contributory negligence remains open. Liability for all other damages is excluded, whereby statutory liability for personal injury and under the the German Product Liability Act (*Produkthaftungsgesetz*) remains unaffected.

3. Insofar as claims for damages are due under this article, these shall lapse within one year from the start of the statutory limitation period. This does not apply to liability for intent, gross negligence, injury to life, limb or health or fraudulent concealment of a defect or claims under the Product Liability Act or if longer periods are prescribed by other mandatory statutory provisions. A reversal of the burden of proof is not associated with the above provisions of VIII. No. 3 above.

IX. Industrial property rights and copyrights

1. The supplier reserves its unrestricted rights of ownership and copyright exploitation rights to cost estimates, drawings and other documents. The documents may only be made accessible to third parties with the prior consent of the Supplier and must be returned to the Supplier immediately upon request if the order is not placed with the Supplier. Sentences 1 and 2 shall apply accordingly to the Purchaser's documents; however, these may be made accessible to third parties to whom the Supplier has permissibly transferred deliveries.

2. The Customer shall indemnify the Supplier against all third-party claims for infringement of industrial property rights in connection with documents or data supplied by him.

X. Data storage

Personal data is stored in accordance with the German Federal Data Protection Act (*Bundesdatenschutzgesetz* – BDSG), including section 33 BDSG, and is processed in connection with business transactions. Further information on data protection can be found on our homepage <https://fit.technology> in the footer under "Data Protection Notice".

XI. Applicable law, place of jurisdiction

1. If the Purchaser is a merchant, the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the Supplier's registered office in Lupburg. However, the Supplier shall also be entitled to bring an action at the registered office of the Purchaser.

2. These Terms and Conditions and the related purchase orders/orders/etc., including their interpretation, shall be governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).