

# General Terms of Delivery of FIT Prototyping GmbH



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## I. Scope of Application

1. The legal relationship between the Supplier (= FIT) and the Purchaser in connection with deliveries and/or services by the Supplier shall be governed exclusively by these General Terms of Delivery. The scope of deliveries shall be stipulated in mutually consistent declarations made in writing by both parties. Any deviations from, or supplements to, these General Terms must be established in writing.

2. The Purchaser's general business terms and conditions shall apply only to the extent that the Supplier has explicitly agreed to them in writing. Deviating or supplementary terms and conditions of the Purchaser are not considered an integral part of the contract, whether in part or in full, even in the event that the Supplier is aware of them and even if no express objections have been made in individual cases. The acceptance of deliveries or services, or of payments, does not constitute agreement.

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

4. In addition to the terms and conditions of business set forth below, the statutory provisions of the Federal Republic of Germany shall apply. This also applies to legal relationships with foreign customers. Application of the UN Sales Convention is precluded.

## II. Formation of Contract

1. All offers made by the Supplier are non-binding with regard to prices, quantities, delivery terms and additional services unless otherwise explicitly stated in the offer. A contract is formed only by a written order confirmation or by the actual performance of services, and the scope of the contract is limited solely to the content of the order confirmation or the scope of the services performed.

2. Offers presented to the Purchaser may not be disclosed to third parties without the prior written consent of the Supplier to such disclosure.

3. Any commitments, agreements, representations or warranties made by employees of the Supplier in connection with the formation of the contract take effect only upon written confirmation by the Supplier.

4. The Supplier reserves the right, even after the order has been confirmed, to make minor adjustments to the specifications of the offer for technical or legal reasons or due to future market requirements.

## III. Prices, Payment Terms, Delays in Payment

1. Prices are understood as EX WORKS Lupburg (Incoterms® 2010), unless otherwise agreed, and as net

of the applicable VAT. Until a contract is formed, the prices presented in the offer are for orientation purposes only. Actual prices shall be based on the prevailing cost factors at the point at which the contract is formed.

2. Unless otherwise agreed, payments are due within 30 days net after the invoice is received.

3. The payment period begins as soon as delivery has been made in full and the duly issued invoice has been received.

4. In the case of overdue payment, the Supplier will charge interest at a rate of 8 percentage points above the relevant base rate from the due date. The right to claim further damage due to the delay in payment is reserved.

5. The Purchaser is only entitled to offset or retention if the counterclaims are undisputed, finally and non-appealably established or explicitly recognized by the Supplier.

## IV. Delivery Terms, Delays in Performance, Partial Deliveries

1. The prerequisite for compliance with delivery deadlines is the timely provision of all documents, necessary approvals and releases, and in particular of requisite materials (documents, drawings, images, graphics, software on data storage media) to be delivered by the Purchaser, and compliance on the Purchaser's part with the agreed terms of payment and other obligations. If these prerequisites are not fulfilled, then the deadlines shall be extended for an appropriate period of time; this condition shall not apply in the event that the delay is caused by the Supplier.

2. In the event that a delay in performance becomes foreseeable, the Supplier shall immediately notify the Purchaser and obtain the Purchaser's decision. A delay in performance due to the mode of shipment does not confer upon the Purchaser the right to a reduction in the invoice amount, to rejection of the delivery, or any similar right.

3. If a delivery deadline cannot be met due to one of the events under a-d below, the deadline shall be extended by an appropriate period of time:

a. force majeure, e.g. war, acts of terrorism, riot, energy and raw materials shortages or similar events (e.g. strikes, lockouts, operational disruptions, or traffic obstructions),

b. viruses or other third-party attacks on the Supplier's IT system, to the extent that such attacks take place despite ordinary care on the part of the Supplier with regard to preventive measures,

c. obstacles due to German, US or other applicable national, EU or international regulations in the area of

foreign trade law, or due to other circumstances which are not under the Supplier's control, or

d. delays or deficits in supplies or deliveries to the Supplier.

4. Both damages claims of the Purchaser due to a delay in performance and damages claims in lieu of performance, are ruled out in all cases of delayed delivery, including after expiration of an extension period. This does not apply in the case of intentional, grossly negligent breach of obligations on the part of the Supplier or in the case of damage to life, limb or health. Withdrawal from the contract in accordance with statutory provisions is possible only in the event that the Supplier is responsible for the delay in performance. The provisions set forth above do not imply a shift in the burden of proof to the Purchaser's disadvantage.

5. A delay in delivery does not entitle the Purchaser to withdraw from the contract or to reject delivery.

6. Partial deliveries and partial performance within the agreed delivery and performance periods are permissible if they can reasonably be deemed acceptable for the Purchaser.

## V. Shipment Terms, Transfer of Risk

1. Shipment always takes place on the basis of EX WORKS Lupburg (Incoterms® 2010) unless otherwise agreed in writing.

2. If, contrary to item 1, shipment takes place in the form of collection by the Purchaser, goods will be handed over without verification of the commissioned collector's authorization; the Purchaser shall not have any claims against the Supplier in the event of errors in relation to the handover of goods.

## VI. Retention of Title

1. The articles delivered (goods subject to retention of title) remain the property of the Supplier until all receivables due from the Purchaser arising from the business relationship have been settled. This also applies to future and conditional receivables. In particular, ownership passes to the Purchaser only if, and to the extent that, the Purchaser releases the Supplier from all contingent liabilities which the Supplier has entered into in the Purchaser's interest, particularly in the case of payment by bill of exchange or check.

2. The Purchaser is obligated to handle the goods delivered by the Supplier, subject to retention of title, with care.

3. The Purchaser may neither pledge, nor assign as security, the goods subject to retention of title, which remain under the ownership of the Supplier. Resale of the goods subject to retention of title is prohibited.

4. In the event of insolvency or composition proceedings, the Purchaser is obligated, prior to the start of the proceedings, to designate the goods subject to retention of title as the property of the Supplier in a manner that will be clear to all third parties, e.g. by affixing a sign to said goods to that effect.

5. As long as a claim exists on the part of the Supplier, the Supplier is entitled to demand information from the Purchaser at any time as to what goods subject to retention of title it still has in its possession, and where

said goods are located. Furthermore, the Supplier is entitled to view the goods subject to retention of title on site, and to repossess them, at any time.

6. The Purchaser must inform the Supplier of any attachments, confiscations or other interventions by third parties in writing, without delay. If a justified interest can be plausibly demonstrated, the Purchaser must provide to the Supplier, without delay, the information required in order for the Supplier to assert its rights against the Purchaser, and must issue the relevant documents.

7. The treatment, processing, or reconfiguration by the Purchaser of the delivered goods subject to retention of title do not give rise to any liabilities. If the delivered goods subject to retention of title are combined and processed with other goods not belonging to the Supplier, the Supplier acquires co-ownership of the new product on a pro rata basis calculated as the value of the delivered goods subject to retention of title in relation to the total value of the other goods at the time at which processing took place.

## VII. Warranty, Complaints

1. Products may vary with regard to quality of materials, coloration, dimensions, etc. Product measurements and dimensions may also vary due to shrinkage or expansion of the materials used or to the geometry of the data.

2. Product variations which subsequently emerge due to external influences such as weather conditions, light, moisture, etc. give rise to warranty claims only if they are attributable to improperly performed work on the part of the Supplier.

3. Products which are manufactured according to designs or data provided by the Purchaser are under warranty only with regard to whether the products correspond to the Purchaser's specifications. There is no warranty regarding the suitability of a product for the purpose defined by the Purchaser.

4. The warranty period is one year as from the transfer of risk, or, to the extent that acceptance is required, as from acceptance; the same applies with regard to withdrawal from the contract or price reductions. This warranty period shall not apply where longer periods are prescribed by law in accordance with section 438 (1) no. 2, section 479 (1) and section 634a (1) no. 2 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*), or in the case of damage to life, limb or health, or intentional or grossly negligent breach of obligations on the part of the Supplier or its vicarious agents.

5. Claims of the Purchaser due to a defect can only be asserted if the Purchaser has duly complied with its obligations to inspect the product and give notice of defect in a timely manner, in accordance with section 377 of the German Commercial Code (*Handelsgesetzbuch – HGB*).

The goods supplied must be carefully examined as soon as they are delivered to the Purchaser or to a third party specified by the Purchaser. Such goods are considered to have been accepted if the Purchaser does not submit to the Supplier a complaint, in writing, regarding obvious defects, or other defects which are identifiable upon immediate, careful inspection, within seven working days after delivery of the goods supplied, or otherwise within seven working days after the discovery of the defect or the point at which the defect became apparent to the Purchaser in the course of normal use of the

goods supplied, without closer inspection. The criterion for timely submission is the point at which the Supplier receives the complaint.

If no complaint is submitted or if the complaint is submitted late, the Purchaser loses its right to assert claims due to any defects in the purchased goods.

6. In the case of a defect, the Supplier first has the option to either remedy the defect, or to supply an article which is free from defects. The Supplier shall be given the opportunity to supplementary performance (*Nacherfüllung*) within a reasonable period of time. In the event that a replacement article is delivered, the Purchaser is obligated to return the defective item. Should supplementary performance fail to remedy the problem, the Purchaser can withdraw from the contract or claim a price reduction.

7. Claims of the Purchaser relating to costs entailed in supplementary performance, in particular transport, shipping-related, labor and material costs, are excluded where the expenses increase because the article in question was subsequently brought to a location other than the Purchaser's place of business, unless the transfer is appropriate due to the intended use of the article.

8. Rights of recourse of the Purchaser against the Supplier in accordance with section 478 BGB exist only to the extent that the Purchaser does not have any agreements in place with its customer which exceed the statutory provisions with regard to claims related to defects.

9. Warranty claims are excluded insofar as they relate to deterioration in the goods due to natural wear and tear or to improper handling of the goods. This applies in particular to deterioration due to improper alterations made by the Purchaser or by unauthorized third parties. Liability for defects is ruled out in the case of defects due to improper handling, improper assembly, installation or processing, failure to follow operating and/or maintenance instructions, or natural wear and tear. The provisions set forth above do not imply a shift in the burden of proof to the Purchaser's disadvantage. Any further claims of the Purchaser due to defects, beyond those set forth in the present section VII., are excluded.

10. In the case of the manufacture of prototypes and samples for the Purchaser, only subsection VII.3 of section VII. applies. There is no warranty on samples and prototypes.

### **VIII. Liability**

1. The Supplier shall pay damages, irrespective of the legal grounds, only:

a. in the case of intent or fraudulent misrepresentation, in full; in the case of gross negligence or of failure to perform despite a contractual warranty, only in the amount of the foreseeable damage which should have been prevented through due care or through the warranty;

b. in other cases, only due to breach of a material obligation where the purpose of the contract is

jeopardized as a result, or due to delayed performance or impossibility of performance, invariably limited to typical direct damages which are foreseeable at the point at which the contract is concluded, and limited to a total amount not higher than the overall compensation provided for under the contract. The Supplier is not liable for defect-related consequential damages caused by slight negligence, for other indirect damages, or for lost profits.

2. The right to claim contributory negligence remains open. Liability for all other damages is excluded; statutory liability in the case of personal injury, and as established in the German Product Liability Act (*Produkthaftungsgesetz*), remains unaffected.

3. To the extent that rights to claim damages arise under this section, they expire one year from the statutory start of the limitation period. This does not apply in the case of liability due to intent or gross negligence, in the case of damage to life, limb or health, or in the case of fraudulent concealment of a defect or in the case of statutory claims provided for under the German Product Liability Act.

### **IX. Industrial Property Rights and Copyrights**

1. The Supplier retains unlimited rights of ownership and rights of use protected under copyright law with regard to cost estimates, drawings and other documents. Such materials may not be made accessible to third parties without the prior consent of the Supplier, and in the event that the contract is not awarded to the Supplier, they must be returned to the Supplier upon request, without delay. Sentences 1 and 2 apply analogously to materials provided by the Purchaser; however, such materials may be made accessible to third parties whom the Supplier has permissibly commissioned to perform deliveries.

2. The Purchaser releases the Supplier from all claims of third parties due to violation of industrial property rights in connection with the documents or data which it has delivered.

### **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.

### **XI. Governing Law, Place of Jurisdiction**

1. The sole place of jurisdiction for all legal disputes arising directly or indirectly from the contractual relationship, provided that the Purchaser is a merchant, is Lupburg, Germany, where the Supplier's head office is located. The Supplier is also entitled, however, to bring suit in the jurisdiction in which the head office of the Purchaser is located.

2. These General Terms and the orders, commissions, etc. to which they relate, and the interpretation of same, are governed by German law, and the UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.