

## **General terms and conditions of sale and delivery of Fortron Source (Europe) GmbH**

### **1. Area of application**

- 1.1 These general terms and conditions of sale and delivery apply to the business relationships between Fortron Source (Europe) GmbH (hereafter referred to as the Seller) and its contracting partner (hereafter referred to as the Buyer) in addition to the agreements made in relation to each order.
- 1.2 Once these terms and conditions have been effectively included, they also apply to all future business relationships. Contradictory or divergent terms are not recognised unless the Seller has expressly consented to their applicability in writing.

### **2. Offers/orders**

- 2.1 Offers made by the Seller are subject to confirmation with regard to price, quantity, delivery date and availability.
- 2.2 Orders are only binding once confirmed in writing by the Seller. If the confirmation differs from the order, the confirmation will be deemed to have been approved by the Buyer if the Buyer does not promptly object to it in writing.

### **3. Invoicing/payment**

- 3.1 The Seller will always invoice the prices valid at the time of delivery.
- 3.2 Payment is due when the invoice is received. Payment must be made as a cashless payment and without charge to the account of the Seller. Payment orders, cheques and bills of exchange are only accepted in lieu of payment following special agreement and the calculation of costs incurred.
- 3.3 If payment in full has not been made within two weeks of receiving an invoice, the Seller is entitled to demand default interest of 8 percentage points above the base rate without a reminder. The right to bring a claim for further losses due to a payment delay is reserved.
- 3.4 Setting off against the Seller's payment claims is only permitted with counterclaims that are undisputed or legally established. The assertion of a right of retention is also excluded, unless the counterclaim is undisputed or legally established.
- 3.5 If the Buyer must pay interest and costs in addition to the main payment, a payment insufficient to discharge the entire debt will be first applied against costs, then against interest and lastly against the main payment. This also applies if the Buyer makes other repayment arrangements.
- 3.6 Payments made by the Buyer will first be applied against the debt due. If multiple debts are due, it will first be applied against the debt that offers the Seller the least security; where the debts offer the same security, against the most burdensome for the Seller; where the debts are equally burdensome, the oldest; and where the debts are the same age, pro rata against each debt. This also applies if the Buyer makes other repayment arrangements.
- 3.7 If there is reasonable doubt with regard to the Buyer's ability to pay or its creditworthiness and if, following an appropriate request, the Buyer is not prepared to make an advance payment or to deposit suitable security for the obligation incumbent upon it, the Seller is entitled to withdraw from the contract.

### **4. Delivery**

- 4.1 There are no fixed delivery times. However, the Seller will always endeavour to make the delivery as quickly as possible.
- 4.2 If a specific delivery date has been agreed on a case-by-case basis, in the event of a delay to the delivery the Buyer must specify an appropriate

grace period, generally of four weeks.

- 4.3 The day of delivery means the day on which the goods leave the factory or warehouse.

### **5. Force majeure/impediments to the contract**

- 5.1 Any type of force majeure, unforeseeable disruption to operations, traffic or dispatch, fire damage, floods, an unforeseeable lack of workforce, energy, raw materials and resources, strikes, lock-outs, official orders and other impediments for which the Seller is not responsible, which reduce, delay, prevent or make unreasonable the manufacture, dispatch, acceptance or use, will release the parties from the obligation to supply or accept delivery for the duration of and to the extent of the disruption.
- 5.2 If delivery or acceptance is delayed for more than eight weeks as a result of the disruption, both parties are entitled to withdraw from the contract.
- 5.3 If the Seller's suppliers cease to exist in whole or in part, there is no obligation to stock up from third-party preliminary suppliers.

### **6. Dispatch**

- 6.1 The Seller reserves the right to select the method and type of dispatch. Additional costs incurred in accommodating particular dispatch requests of the Buyer will be charged to the Buyer.
- 6.2 Risk for destruction of, loss of or damage to the goods passes to the Buyer when dispatched or when collected by the Buyer.

### **7. Retention of title**

- 7.1 The goods only become the property of the Buyer once the Buyer has fulfilled all of its obligations in connection with the business relationship with the Seller, including ancillary claims, claims for compensatory losses, and redeeming cheques and bills of exchange. The retention of title remains in force if individual receivables of the Seller are included in a current invoice and the balance is drawn and acknowledged.
- 7.2 The Seller is entitled, without specifying a grace period and without withdrawing from the contract, to take back from the Buyer the goods subject to retention of title if the Buyer defaults on its obligations to the Seller. When taking back the goods subject to retention of title, the contract may only be rescinded if the Seller expressly states this in writing. If the Seller withdraws from the contract, it can demand appropriate payment for the duration of the provision/use of the goods.
- 7.3 In the event of processing of the goods subject to retention of title, the Buyer will work for the Seller, without acquiring any claims against the Seller as a result of the processing. The Seller's right of retention therefore extends to the work products resulting from the processing. If the reserved goods are processed together with goods that are the property of third parties, or if the reserved goods are combined or mixed with goods that are the property of third parties, the Seller will acquire proportional co-ownership of the work products arising as a result of this based on the ratio of the invoice value of the reserved goods to the invoice value of the goods owned by third parties. If the combining or mixing is undertaken with an essential component of the Buyer, the Buyer now assigns to the Seller its proprietary rights to the new item.
- 7.4 The Buyer is obliged to carefully keep safe the reserved goods for the Seller and to insure the reserved goods against loss and damage at its own cost to the extent required by a prudent business person. The Buyer assigns its claims arising under the insurance policies to the Seller in advance.

- 7.5 Provided that the Buyer duly complies with its obligations to the Seller, it is entitled to dispose of the reserved goods in the ordinary course of business. However, this does not apply if and to the extent that a prohibition on assignment of the purchase price receivable has been agreed between the Buyer and its purchasers. The Buyer is not authorised to pledge, create security over or otherwise encumber the goods. In the case of re-sales, the Buyer must make the transfer of ownership dependent on payment in full for the goods by its purchasers.
- 7.6 The Buyer hereby assigns to the Seller all claims arising out of the resale of the reserved goods together with all ancillary and security interests, including bills of exchange and cheques, to secure any claims the Seller may have against the Buyer arising under the business relationship. If reserved goods are resold together with other items for an overall price, the assignment will be limited to the pro rata amount of the Seller's invoice that corresponds to the reserved goods. If goods are resold in respect of which the Seller has a co-ownership interest, the assignment will be limited to that part of the receivable that corresponds to the Seller's co-ownership share. So long as the Buyer meets its payment obligations when due, it is entitled to collect the receivables arising from a re-sale itself. It is not authorised to create pledges or otherwise assign.
- 7.7 If it appears to the Seller that the realisation of its claims is at risk, the Buyer must, on request, inform its purchasers of the assignment and provide the Seller with all necessary information and documents. The Buyer must immediately inform the Seller about any third-party access to the reserved goods and assigned claims.
- 7.8 If the value of security provided to the Seller exceeds the receivables of the Seller from the Buyer by more than 20%, the Seller is obliged to release security to this extent at the Buyer's request. The Seller will select the security to be released.

#### **8. Compensation claims**

- 8.1 In the event of a minor negligent breach of an obligation by the Seller, its management personnel or its vicarious agents, compensation claims by the Buyer – including non-contractual claims – are excluded, unless the breach relates to an obligation that is of material importance to the achievement of the purpose of the contract.
- 8.2 The Seller will only be liable for indirect losses, as well as losses that were not foreseeable at the time the contract was entered into, in the event of gross negligence of the Seller or its management personnel.
- 8.3 The aforementioned limitations do not apply to losses arising from loss of life, physical injury or damage to health. Mandatory statutory liability provisions, such as liability when offering a warranty or under the German Product Liability Law (Produkthaftungsgesetz) remain unaffected.

#### **9. Notices of defects**

- 9.1 Notices of defects will only be taken into consideration if they are filed without delay in writing no later than fourteen days after receipt of the goods, together with receipts, samples and packaging, as well as stating the invoice number, invoice date and the lettering found on the packaging.
- 9.2 In the event of hidden defects, a written complaint must be raised without delay upon noticing the defect and in any event no later than five months after receiving the goods. The limitation period is not affected by this. The burden of proof to show that there is a hidden defect lies with the Buyer.
- 9.3 Goods for which a complaint has been raised may only be returned with the express permission of the Seller.

#### **10. The Buyer's rights in the event of defects**

- 10.1 Any claim for defects raised by the Buyer is limited to the right to subsequent performance. If subsequent performance undertaken by the Seller fails, the Buyer can reduce the purchase price or, at its discretion, with-

draw from the contract. Any claims for compensation are not affected by this. Any claims of the Buyer for costs necessary for the subsequent performance, in particular costs in connection with transportation, road costs, work costs and material costs, are excluded to the extent that the costs increase because the delivered item has subsequently been taken to a place other than the Buyer's branch office, unless such relocation corresponds to its intended use.

- 10.2 If the warranty involves recourse of the Buyer following a successful claim by it on the basis of the provisions governing the purchase of a consumer good, the claims under a right of recourse in accordance with the regulations on the purchase of consumer goods shall remain unaffected.
- 10.3 The Buyer is obliged to inform with Seller of all cases of recourse arising in the supply chain without delay upon becoming aware of the same. Statutory claims under a right of recourse against the Seller shall not apply to arrangements entered into by the Buyer with its purchasers over and above statutory claims for defects.
- 10.4 The agreement of a warranty must be made in writing. A written warranty is only effective if it describes in sufficient detail the content of the warranty, as well as the duration and the geographical scope of the warranty protection.

#### **11. Limitation period**

- 11.1 Claims for defects expire in one year from the start of the statutory limitation period in the case of section 438 (1) no. 3 German Civil Code (BGB). In the case of section 438 (1) no. 2 BGB, they expire in two years from the start of the statutory limitation period.
- 11.2 Mandatory statutory limitation and liability provisions, such as liability when offering a warranty, liability for wilful and grossly negligent acts, for loss of life, physical injury and damage to health, for the breach of important contractual obligations, liability under the German Product Liability Law (Produkthaftungsgesetz) and the provisions regarding the purchase of consumer goods, remain unaffected.

#### **12. Place of jurisdiction/applicable law/final provision**

- 12.1 The place of jurisdiction is Krefeld in Germany.
- 12.2 German law applies exclusively.
- 12.3 If any provisions of these terms and conditions are invalid, this does not affect the validity of the remaining provisions.