

1. **Scope**

These General Terms of Delivery apply to legal transactions of FAMETEC GmbH (the "Seller") with regard to the delivery of goods, and analogously also to the provision of services. These General Terms of Delivery apply also to all future business transactions of the Seller, in particular to spare parts orders, even if they have not been again expressly agreed
  2. **Offer**
    - 2.1 Offers of the Seller shall be considered non-binding.
    - 2.2 Any documentation regarding offers and projects must neither be reproduced nor made available to third parties without the Seller's consent. The return of such documents may be requested at any time and they shall be returned to the Seller immediately once the order has been placed elsewhere.
  3. **Contract conclusion**
    - 3.1 The contract is deemed concluded once the Seller has sent a written order confirmation or consigned a delivery after receipt of the order.
    - 3.2 Any subsequent amendments and supplements to these terms shall be confirmed in writing to be valid.
    - 3.3 Contradictory terms or terms and conditions of the party purchasing goods and/or services from Seller ("the Buyer") that deviate from these General Terms of Delivery are not applicable and will not be recognized by the Seller unless expressly confirmed by the Seller in writing. Fulfillment of a contract by the Seller does not imply agreement to terms and conditions that deviate from these General Terms of Delivery.
  4. **Delivery**
    - 4.1 The delivery period shall commence on the latest of the following dates:
      - a) Date of order confirmation
      - b) Date of fulfilment of all technical, commercial and other requirements incumbent upon the Buyer;
      - c) Date on which the Seller receives an advance payment or security that needs to be provided before delivery of the goods.
    - 4.2 Approvals by authorities and third parties that might be required for delivery of goods or provision of services shall be obtained by the Buyer. If such approvals are not obtained in time, the delivery period shall be extended accordingly.
    - 4.3 The Seller shall be entitled to effect and charge partial or advance deliveries. If delivery on call has been agreed, the goods shall be deemed called up 6 months after the order was placed at the latest.
    - 4.4 In case any unforeseeable circumstances or circumstances outside the parties' sphere of influence such as, for example, all instances of force majeure, occur, which prevent compliance with the delivery period agreed upon, the latter shall be extended by the duration of such circumstances in any case; this shall include, in particular, armed conflicts, official interventions and bans, transport and customs delays, transport damage, shortage of power and raw materials, epidemics, industrial disputes and the loss of a crucial supplier that is difficult to replace. These above-mentioned circumstances shall also be deemed reasons for extending the delivery period if they affect sub-suppliers.
    - 4.5 If, upon conclusion of the contract, a contractual penalty for default in delivery has been agreed, such penalty shall be paid in compliance with the following provision and, for the rest, any deviation from this provision in individual contracts shall not affect its applicability:

In case of a delay in delivery that has demonstrably occurred solely through the fault of the Seller, the Buyer shall be entitled to claim, for every full week of delay, a contractual penalty of no more than 0,5 % (zero point five percent), up to a maximum of 5 % (five percent), of the value of the parts whose delivery is delayed, provided a loss was incurred by the Buyer not lower than that amount.

Any further claims from the delay shall be excluded.
    - 4.6 If acceptance has been agreed, the goods shall be deemed fully accepted three months after delivery or upon commencement of their use in the context of the Buyer's business operation, whatever comes first.
    - 4.7 If goods are ready for shipment but cannot be delivered for reasons beyond Seller's responsibility, Seller shall be entitled to put the goods into a warehouse owned by itself or third parties for Buyer's costs. Delivery shall be deemed effected on the date of readiness for shipment as notified to the Buyer and any payments on delivery shall become due within 30 days after this notification. The risk of loss and damage shall pass to the Buyer at the time of the deemed delivery and all costs for storage, preservation, guarding and insurance shall be borne by the Buyer.
    - 4.8 The Seller shall be entitled to use subcontractors with regard to all deliveries and the services, provided the Seller informs the Buyer accordingly.
  5. **Transfer of risk and place of performance**
    - 5.1 Unless otherwise agreed, the delivery of the goods shall be deemed sold EXW Leonding, Austria, according to INCOTERMS® 2020.
    - 5.2 The place of performance of services is primarily the place specified in the written order confirmation, secondarily it is the place where the service is actually performed by the Seller. The risk of a performance or partial performance agreed shall vest in the Buyer upon performance being effected.
  6. **Payment**
    - 6.1 If no terms of payment have been agreed, the first half of the price shall be due upon receipt of the order confirmation, and the second half upon Seller's written notification to Buyer that the goods are ready for shipment.
    - 6.2 The Seller shall be entitled to demand an irrevocable Letter of Credit, payable at sight at the counters of Seller's advising bank. The bank which issues the Letter of Credit as well as the form and content of the same are subject to Seller's written approval. The Seller shall bear only the costs of advising the Letter of Credit in Austria.
    - 6.3 In case of partial invoices, the partial payments shall be due upon receipt of the relevant invoice. This shall also apply to settlement amounts arising due to subsequent deliveries or other agreements beyond the original final amount, notwithstanding the terms of payment agreed for the main delivery.
    - 6.4 Payments shall be made in the currency agreed to the Seller's bank account, indicated in an individual contract or on Seller's invoice, without any deductions or charges. Any cheques or bills of exchange shall only be accepted as an undertaking to pay. All associated interest and expenses (such as debiting and discount charges) shall be borne by the Buyer.
    - 6.5 The Buyer shall not be entitled to retain or offset payments on account of warranty claims or other counterclaims.
    - 6.6 A payment shall be deemed made on the date the Seller is able to dispose of the amount paid.
    - 6.7 If the Buyer is in default of any agreed payment or other performance from this or any other legal transactions, the Seller may, without prejudice to any other rights the Seller may have,
      - a) postpone fulfilment of its own obligations until said payment or other performance has been effected, and claim an appropriate extension of the delivery period and/or
      - b) demand payment of all outstanding receivables from this or other legal transactions and charge the higher of statutory default interest or 8 % p.a. plus VAT for these amounts, with effect from the respective due date, unless the Seller is able to provide proof of any additional costs and/or
      - c) perform other legal transactions only against cash in advance.

At any rate, the Seller shall be entitled to invoice pre-trial expenses, in particular dunning expenses and lawyers' fees, according to applicable statutory provisions.
    - 6.8 The Seller shall retain title to all goods delivered until full payment of the amounts invoiced plus interest and costs. To secure the Seller's purchase price claim, the Buyer hereby assigns to the Seller its claims from reselling goods subject to retention of title, even after they have been further processed, transformed or mixed. If the law of the country where the goods are does not provide for a retention of title the Seller shall be entitled to demand any other security.
    - 6.9 The Seller shall be entitled to submit the invoice electronically.
    - 6.10 The Buyer shall bear and pay all taxes, charges, fees, customs duties etc. levied by authorities in Buyer's country or any third country in connection with the performance of the contract. In the event any such taxes, charges, fees, customs duties etc. are imposed upon Seller the Buyer shall save the Seller harmless.
  7. **Warranty**
    - 7.1 The Seller warrants that upon delivery the goods will be free from defects resulting from faulty material or bad workmanship.

No warranty or liability claims may be derived from information provided in catalogues, brochures, advertising material and written or oral statements not included in the contract.
    - 7.2 The warranty period for the goods shall be 12 months and shall start from the date of delivery of the goods from Seller's or sub-suppliers' workshop, or, if there is a delay in delivery which is not attributable to the Seller, the warranty period shall start from the notification of readiness for shipment.
    - 7.3 The warranty claim is contingent upon the prerequisite that the Buyer has immediately reported any defects that have occurred in writing and that the Seller receives this report. The Buyer shall provide evidence that the defect exists within an appropriate period of time, in particular by providing to the Seller the documents and/or data available on the Buyer's premises. In the event of a defect subject to the warranty obligation under item 7.1, the Seller shall, at its discretion, rectify the defective good or the defective part at the place of performance of performance, or arrange for it to be sent to its own or a third party's location for rectification, or replace it by a non-defective one, or reduce the price accordingly.
    - 7.4 The warranty covering replacement or repaired components shall expire on the same date as that of the main delivery.
    - 7.5 Any supporting staff, devices, incidentals required for performing warranty work on the Buyer's premises shall be provided on Buyer's costs. Replaced parts shall pass into the Seller's ownership.
    - 7.6 If goods are manufactured by the Seller based on design descriptions, drawings, models or other specifications provided by the Buyer, the Seller's liability shall only extend to execution as agreed in the said specifications.
    - 7.7 Unless otherwise agreed, the warranty shall not include any defects that result from non-compliance with conditions of use, excessive stress on parts beyond the performance specified by the Seller, negligent or incorrect treatment or use of inappropriate operating material; this shall also apply to defects resulting from material provided by the Buyer. Nor shall the Seller be liable for damage resulting from acts by third parties, atmospheric discharges, overvoltage and exposure to chemicals. The warranty shall not cover the replacement of parts that are subject to natural wear and tear.
    - 7.8 The warranty shall lapse immediately once the Buyer itself or a third party not explicitly authorised by the Seller effects any modifications or repairs to the goods delivered without written consent by the Seller.
    - 7.9 Provisions 7.1 to 7.8 shall apply accordingly to liability for defects on other legal grounds.
  8. **Rescission of the contract**
    - 8.1 Unless any more specific provision was agreed, the Buyer shall be entitled to rescind the contract for default in delivery resulting from gross negligence on the part of the Seller and the unsuccessful expiry of a reasonable period of grace granted. Rescission shall be declared by means of a registered letter.
    - 8.2 Notwithstanding its other rights, the Seller shall be entitled to rescind the contract
      - a) if the execution of the delivery and/or commencement or continuation of the performance becomes impossible for reasons within the sphere of responsibility of the Buyer or is delayed despite an appropriate period of grace being granted,
      - b) if concerns with regard to the solvency of the Buyer have been raised and the latter does neither make an advance payment upon request by the Seller nor provide suitable security before delivery,
      - c) if the delivery period is extended due to the circumstances mentioned in item 4.4 for more than half of the delivery period originally agreed, but for at least 6 months, or
      - d) if the Buyer does not or not duly meet the obligations imposed upon it under item 13.
    - 8.3 Rescission may also be declared with regard to an outstanding part of the delivery or performance for the reasons listed above.
  - 8.4 If insolvency proceedings are opened with respect to the Buyer's assets or a request for initiation of insolvency proceedings is rejected for lack of sufficient assets, the Seller shall be entitled to rescind the contract without granting a period of grace.
  - 8.5 Notwithstanding the Seller's compensation claims including pre-trial costs, in the event of rescission, every performance or partial performance already effected shall be settled and paid as contractually agreed. This shall also apply to any delivery or performance not yet accepted by the Buyer as well as for any preparatory measures effected by the Seller. The Seller shall also be entitled to request the return of products already delivered instead.
  - 8.6 Any other consequences of rescission shall be excluded.
  - 8.7 Any claims asserted by the Buyer for *laesio enormis*, error and frustration of contract shall be excluded.
  9. **Confidentiality**

The Buyer expressly undertakes to keep secret the drawings, technical and commercial information, physical items, documents and data provided by the Seller (the "Confidential Information") and shall not disclose them to third parties without Seller's foregoing written permission. Confidential Information must not be used for any other purpose than agreed in an individual sales contract. Physical items must not be subject to reverse engineering.
10. **Seller's liability**
  - 10.1 The Seller shall be liable for damage exclusively as set forth below and only if its intent or gross negligence is proven. Total liability of the Seller in cases of gross negligence shall be limited to the lower of the net contract value of the individual sales contract or EUR 500,000. The Seller's liability shall be limited to the lower of 25 % of the net contract value of the individual sales contract or EUR 125,000 per event of loss.
  - 10.2 Unless otherwise agreed, any liability for slight negligence, with the exception of personal injury, and compensation for consequential damage, pure financial loss, indirect loss, production downtime, cost of financing, cost of substitute power, loss of power, data or information, lost profit, savings not achieved, interest losses and losses from third-party claims asserted against the Buyer shall be excluded.
  - 10.3 Unless otherwise agreed, all forms of compensation shall be excluded in case of non-compliance with conditions of use (such as those included in operating instructions) or official authorisation requirements.
  - 10.4 If contractual penalties have been agreed, any claims of the Buyer beyond that arising from the relevant title shall be excluded.
  - 10.5 Recourse claims of the Buyer or of third parties under the Austrian product liability law against the Seller are excluded, unless the Buyer or the respective third party proves that the defect was caused in Seller's sphere and by gross negligence.
  - 10.6 The provisions 10.1 to 10.5 shall finally settle all claims of the Buyer vis-à-vis the Seller, on any legal ground and title whatsoever, and shall also apply for the benefit of all staff members, subcontractors and sub-suppliers of the Seller.
11. **Industrial property rights and copyright**
  - 11.1 If a product is manufactured by the Seller based on design descriptions, drawings, models or other specifications provided by the Buyer, the Buyer shall fully indemnify the Seller in the event of any violation of property rights.
  - 11.2 Final planning documents such as plans, drawings and other technical documentation, samples, catalogues, brochures, images and the like shall remain the intellectual property of the Seller at all times and shall be used by the Buyer only for their purpose as defined in the individual sales contracts.
12. **Assertion of claims**

All claims of the Buyer shall be asserted in court within two years after delivery or performance of the services, otherwise they shall be forfeited, unless other deadlines are provided for by mandatory statutory provisions.
13. **Compliance with export regulations**
  - 13.1 When passing on the goods supplied by the Seller to third parties, together with the pertinent documents, regardless of the manner in which the latter are provided or the services performed by the Seller, including technical support of any kind, the Buyer shall comply with the applicable provisions of the national and international (re-)export regulations. In any case, the Buyer shall comply with the (re-)export regulations of the Seller's country of domicile, the European Union, the United Kingdom of Great Britain and Northern Ireland and the United States of America when passing on the goods and/or services to third parties.
  - 13.2 If required for export control checks, the Buyer shall immediately provide to the Seller upon request all necessary information, among others about the final recipient, final destination and purpose of use of the goods and/or services.
  - 13.3 If requested by the Buyer in due time, the Seller shall support the Buyer to obtain necessary documents for the proof of the preferential origin of the goods in regard to the customs tariffs. The Seller shall provide any such support at Buyer's cost and risk against a handling fee.
14. **General information**
  - 14.1 If individual provisions of the contract or of these General Terms of Delivery should be invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced with a valid provision that approximates the intended objective as closely as possible.
  - 14.2 Any consequences resulting from changes in law or regulations or new laws or regulations enacted after the date of the Seller's offer shall be borne by the Buyer. In case of import restrictions imposed by public authorities, such as but not limited to import duties, tariffs or taxes the prices shall be adapted accordingly.
  - 14.3 The German-language version shall be deemed the authentic version of the General Terms of Delivery and shall be used to interpret the contract.
15. **Place of jurisdiction and applicable law**
  - 15.1 All disputes or claims arising out of or in connection with the contract, including disputes relating to its validity, breach, termination or nullity, shall be finally settled under the Rules of Arbitration of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber by one or three arbitrators appointed in accordance with the said Rules. Arbitration shall take place in Linz, Austria and proceedings shall be held in the English language.
  - 15.2 The contract shall be governed by Austrian substantive law under exclusion of its conflicts-in-law-provisions and the UN Convention on Contracts for the International Sale of Goods.
16. **Reservation clause**

Performance of the contract on the part of the Seller shall be subject to the reservation that no obstacles exist under national or international (re-)export regulations, in particular no embargoes and/or other sanctions.