

**General Terms and Conditions of Sale and Delivery of FACO Metalltechnik GmbH & Co. KG**  
(as at: 10/2019)

**Scope of application:**

- **Towards** Companies, § 14 BGB;
- legal entities under public law/a special fund under public law in accordance with § 310 BGB;

hereinafter collectively referred to as "Buyer".

**I. General Information**

1. These conditions (as well as any separate contractual agreements) are the basis of all deliveries and services and shall also apply to all future business relations, even if they are not expressly agreed again.
2. Deviating (purchasing) conditions of the customer which are not expressly acknowledged in writing, shall not become part of the contract even upon acceptance of the order and shall not be applicable even by silence. By placing an order, the customer acknowledges these general terms and conditions of sale and delivery.
3. These terms and conditions shall also apply to all future transactions with the customer, insofar as these are legal transactions of a related nature and no updated terms and conditions exist.

**II. Offers and Conclusion of Contract**

1. All offers are subject to confirmation and non-binding, unless otherwise agreed in writing.
2. In the absence of a special agreement, a contract shall come into existence upon written confirmation of the order by the supplier. If an order is to be regarded as an offer (§ 145 BGB), it can be accepted within 2 weeks.
3. Orders are binding for the customer. Only the written order confirmation is decisive for the acceptance, the scope and the execution of the delivery, unless the customer immediately objects in writing; this applies in particular to verbal orders. Orders altering or supplementing the offer must also be confirmed in writing. A written confirmation is also required for telegraphic, telephone, e-mail or verbal agreements, assurances, supplements or ancillary agreements to be deemed valid.
4. The documents belonging to the offer show approximate values, as far as they are not declared as binding. All documents submitted to the customer in connection with the order, e.g. drawings, illustrations, calculations, cost estimates, technical picture material, etc., remain subject to property rights and copyrights; they may not be opened to third parties without written permission. Such documents shall be returned in the event that the contract has not been concluded. They shall also be surrendered upon request if they are no longer required by the customer in the ordinary course of business.
5. We reserve the right to customary, designed deviations (e.g. due to technical progress) which do not impair the intended use (e.g. colour deviation, change of shape).
6. Quality and dimensions are determined according to the DIN standards or Material data sheets. If no DIN standards or material data sheets exist

or are available, the corresponding Euro standards apply, due to the lack of such is the custom of the trade.

7. Without express agreement, no special surface condition of the basic material, particularly absence of grease, is owed.

### **III. Prices and PPayments**

1. Unless otherwise agreed, the prices stated in the order confirmation are ex works, excluding packaging, unloading and customs duties. Value added tax at the respective statutory rate shall be added to the prices. Upon request, the delivery can be covered by transport insurance; the costs shall be borne by the customer.
2. The goods are always made available unpacked and without corrosion protection. Packaging or protective measures will only be used at the express request of the customer. Such measures or Packaging is charged at cost price. Complaints because of defective packaging are excluded.
3. In the absence of a special agreement, payment shall be made to the notified business account as follows:  
  
Within 30 days net after date of invoice or within 10 days with 2% discount. Payments for contract work shall be made net immediately upon receipt of invoice.
4. The prices valid on the day of delivery are decisive for the price formation, unless a fixed price agreement has been made. Appropriate and reasonable price changes due to changes in wage, material and distribution costs for deliveries made 6 months or more after conclusion of the contract are reserved, as well as in the event of significant exchange rate fluctuations (USD / EUR).
5. Interest on arrears shall be charged in accordance with § 288 Para. 2 BGB at 9 percentage points above the base interest rate. The assertion of a concrete damage caused by default remains reserved.
6. The customer shall only be entitled to withhold payments or offset them against counterclaims to the extent that his counterclaims are undisputed or have been legally established. Warranty claims asserted do not impede the maturity of the claim. If, after the conclusion of the contract, it becomes apparent that the claim to consideration is endangered due to lack of ability to pay, immediate provision of security or payment may be demanded (§321 BGB).
7. The right to secure deliveries via credit insurance and to inform the insurer of the necessary data of the customer and the order remains reserved.
8. In case of doubt, orders on call are to be placed at the latest within one year after to retrieve the order placement. If the call-off order is not accepted in full, the supplier is entitled to demand a surcharge for small quantities. In the case of current delivery schedules, the customer must announce the planned discontinuation of the part as soon as possible - but at least 6 months before discontinuation. Otherwise, the customer shall reimburse the pre-planned material and production costs.

### **IV. Delivery Periods, Delay in Delivery**

1. All information about delivery times are only approximate and therefore non-binding. The start of the delivery period shall be determined by the date of the order confirmation unless otherwise agreed (e.g. from receipt of payment in advance). Compliance with the delivery period requires that all commercial and technical questions between the contracting parties have been clarified and that the customer has fulfilled all obligations

incumbent upon him, such as the provision of documents to be provided, releases or (advance) payment obligations. If this is not the case, the delivery period shall be extended accordingly. In the event of non-compliance with the delivery period for which the supplier is responsible, the customer may demand performance in writing after expiry of the delivery date specified without obligation and may set a reasonable delivery period for his part, which must, however, be at least 4 weeks.

2. The observance of a specified delivery period is subject to correct and punctual delivery to us. Any imminent delays will be notified as soon as possible.
3. The delivery period shall be extended appropriately - even within a delay in delivery - e.g. in the event of force majeure, measures within the framework of industrial disputes, energy shortages and other events beyond the control of the supplier. The obligation to deliver shall be suspended for the duration of the disruption. The beginning and end of such obstacles will be communicated to the customer as soon as possible. Claims for damages are excluded.
4. In the event of subsequent amendments to the contract which may influence the delivery period, the delivery period shall be extended by a reasonable amount.
5. The delivery period shall be deemed to have been observed if the delivery item has left the Supplier's factory or readiness for dispatch has been notified before its expiry. Insofar as acceptance has to take place, the acceptance date shall be decisive - except in the case of justified refusal of acceptance - or alternatively the notification of readiness for acceptance to the customer.
6. If dispatch or acceptance is delayed at the customer's request for reasons for which the customer is responsible, the customer shall be charged the costs incurred as a result of the delay, starting one month after notification of readiness for dispatch, but at least 0.5% of the invoice amount for each month if the goods are stored at the supplier's factory. The Supplier shall also be entitled, after setting and fruitless expiry of a reasonable period of time, to dispose otherwise of the delivery item and then to supply the Purchaser again within a reasonably extended period of time.
7. If the customer suffers damage due to a delay in delivery, he shall be entitled to demand a lump-sum compensation for the delay, excluding any further claims for compensation. It shall amount to 0.5% for each full week of delay, but in total not more than 5% of the value of that part of the total delivery which cannot be used on time or in accordance with the contract as a result of the delay.
8. The customer checks the delivery documents and acknowledges them. Any objections must be notified immediately in writing, otherwise the delivery shall be deemed accepted.

## **V. Right of WWithdrawal**

1. If the customer - taking into account the statutory exceptions - sets a deadline for performance after the due date and the deadline is not met, the customer shall be entitled to withdraw from the contract within the framework of the statutory provisions. He undertakes, at the request of the supplier, to declare whether he wishes to exercise his right of withdrawal. For the rest, Section IX shall apply.
2. The customer may withdraw from the contract without setting a deadline if the entire performance becomes finally impossible before the transfer of risk. In addition, the customer may withdraw from the contract if the execution of part of the delivery becomes impossible for an order and he has a justified interest in rejecting the partial delivery. If this is not the case, the customer shall pay the contract price attributable to

the partial delivery. The same applies to incapacity. If the impossibility or inability to perform occurs during the delay in acceptance or if the customer is solely or predominantly responsible for these circumstances, he shall remain obliged to pay consideration.

3. If the fulfilment of the contractual delivery obligations is temporarily hindered by the occurrence of unforeseeable circumstances, in particular "force majeure" - despite the use of reasonable care according to the circumstances of the case - irrespective of whether the obstacles have occurred in the factory or at suppliers (e.g. operational disruptions, strike/lockout, delays in the delivery of essential raw materials, energy shortages, loss of means of transport etc.), the delivery obligation shall lapse without the customer being able to assert claims for damages. The customer is only entitled to withdraw from the contract if the delay is unreasonable for him.

## **VI. Transfer of Risk, Acceptance and Dispatch**

1. The risk shall pass to the customer upon commencement of loading of the delivery item, even if partial deliveries are made or the supplier has assumed other services, e.g. shipping costs or delivery. Insofar as acceptance is to take place, this shall be decisive for the transfer of risk. It must be carried out immediately on the acceptance date or after notification of readiness for acceptance (within 7 working days). The customer may not refuse acceptance in the event of an insignificant defect. If the customer does not accept the goods or refuses to do so despite having set a grace period, damages may be claimed for non-performance and/or the contract may be rescinded in whole or in part.
2. If dispatch or acceptance is delayed or omitted due to circumstances for which the Supplier is not responsible, the risk shall pass to the Purchaser on the day of notification of readiness for dispatch or acceptance. From the same point in time, the customer shall be liable for any damage that may be caused to third parties. It is assured to take out the insurances demanded by the customer at the customer's expense.
3. Shipment shall always be at the risk of the customer, even in the case of carriage paid deliveries and transport with the company's own vehicles. The shipping route, type of dispatch and means of dispatch shall be left to the discretion of the supplier, to the exclusion of liability and without guarantee for the cheapest transport, unless instructed to do so by the customer.
4. Partial deliveries shall be permissible insofar as they are reasonable for the customer.

## **VII. Claims for Defects/Warranty**

1. The customer must inspect the goods immediately after delivery and report any defects/incorrect deliveries/shortfall in quantities in writing without delay (within 1 week of receipt). The inspection and complaint obligations are based on § 377 HGB (German Commercial Code). The Supplier shall have the opportunity to record and inspect the notified defect; the delivery item shall not be changed/processed/released to third parties for the time being.

Insofar as measures are taken to minimise damage or negotiations are commenced on the grounds of a defect complained of, this shall neither be deemed an acknowledgement nor a waiver of the objection to the complaint not made in good time.

2. Delivered parts which turn out to be defective as a result of a circumstance prior to the passing of risk shall be repaired or replaced free of defects at the discretion of the supplier; replaced parts shall become his property. In the event of a replacement

delivery, the customer must return the defective item to the supplier in accordance with the statutory provisions.

3. After notification, the Purchaser shall grant the necessary time and opportunity to carry out all necessary repairs and replacement deliveries in the event of a justified complaint; otherwise the Supplier shall be released from liability for the resulting consequences. Only in urgent cases to prevent disproportionately large damage or endanger operational safety, in which case the supplier must be notified immediately, shall the purchaser have the right to remedy the defect himself or have it remedied by third parties and demand reimbursement of the necessary expenses. If the goods are repaired or replaced within the scope of the warranty, this shall not trigger a new commencement of the warranty obligation. Multiple repairs are permitted.
4. If a complaint turns out to be justified, the Supplier shall bear the costs arising from the repair or replacement delivery only to the extent that no disproportionate burden occurs. Of the direct costs arising from the repair or replacement delivery, the Supplier shall bear the costs of the replacement delivery including dispatch to the originally agreed place of delivery. Any costs for transportation to a place other than the place of delivery shall be borne by the customer.
5. The Supplier shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs as well as any dismantling and installation costs, in accordance with the statutory provisions, if a defect actually exists. However, the supplier reserves the right in the event of subsequent performance to carry out any necessary dismantling and installation itself. The Supplier shall only owe reimbursement of expenses for dismantling and installation costs if he allows a reasonable deadline set by the Purchaser to elapse fruitlessly or if the setting of a deadline is dispensable. If there is actually no defect, the Supplier may demand reimbursement from the Purchaser for the costs (in particular testing and transport costs) incurred as a result of the unjustified request to remedy the defect, unless the Purchaser was unable to recognise the defect.
6. Within the framework of the statutory provisions, the Purchaser shall have the right to withdraw from the contract if the Supplier - taking into account the statutory exceptions - fails to remedy a material defect within a reasonable period of time set by the supplier. If there is only an insignificant defect, the customer shall only be entitled to reduce the contract price. The right to a reduction of the contract price shall otherwise be excluded. Further claims shall be governed by Section IX. of these Terms and Conditions.
7. If the customer withdraws from the purchase contract in a justified manner or if he claims damages instead of performance, the supplier is obliged to remove and transport the delivered defective item at his own expense, insofar as the customer has already installed it. The Purchaser may carry out the dismantling itself upon request; in this case the Supplier shall reimburse the Purchaser for the resulting costs, but only to the extent that they are the Purchaser's own costs without a share in the profits. If the Purchaser commissions a third party company to carry out the dismantling and/or removal, the costs incurred shall only be reimbursed if the Purchaser has unsuccessfully set the Supplier a reasonable grace period beforehand, unless the grace period is dispensable under the statutory provisions.
8. In particular, the supplier does not assume any warranty in the following cases: Usability of the goods for the purpose intended by the customer, unless the usability has been expressly confirmed by contract, unsuitable or improper use, faulty assembly or processing/repair by the customer or third parties, installation of foreign parts, natural wear, excessive strain/wear (all rotating parts, drive, tools; scale is single shift

operation), faulty or negligent treatment, chemical, electrochemical or mechanical influences, insofar as they are not the responsibility of the supplier. Deviations in weight, colour, dimensions and quantity which are customary in trade and reasonable for the customer do not constitute a defect.

9. Properties shall only be deemed warranted if they are expressly designated as such in the contract. No warranty shall be assumed for information, advice and references regarding any performance characteristics, areas of application, possible uses or the like; unless they have been assured in writing. Oral information and information in the documents do not contain any assurances; they are for specification purposes only. As far as the materials to be used by the supplier are contractually specified, this only guarantees the specification and not the suitability of the materials for the contractual purpose. The supplier shall only be obliged to provide information in the event of their obvious unsuitability. The customer informs himself about possible export regulations and state regulations.
10. In the case of used goods, a warranty is excluded unless the supplier conceals defects intentionally or through gross negligence.
11. The Purchaser's right of recourse against the Supplier shall only exist to the extent that the Purchaser has not entered into any agreements with its customer which go beyond the legally mandatory claims based on defects.
12. If the customer or a third party commissioned by him carries out improper repairs, the supplier assumes no liability for the resulting consequences. The same applies to changes to the delivery item made without prior consent.
13. If the use of the delivery item leads to the infringement of industrial property rights or copyrights in Germany, the Supplier shall, at its own expense, procure the right for the Purchaser to continue using the delivery item or modify the delivery item in a manner reasonable for the Purchaser in such a way that the infringement no longer exists. If this is not possible under economically reasonable conditions or within a reasonable period of time, the Purchaser shall be entitled to withdraw from the contract. Under the aforementioned conditions, the Supplier shall also be entitled to withdraw from the contract. In addition, the Supplier shall indemnify the Purchaser against undisputed or legally established claims of the holders of the industrial property rights.
14. Subject to Section IX, the Supplier's obligations set forth in Section VIII.13 shall be final in the event of an infringement of industrial property rights or copyrights and shall only apply if the Purchaser notifies the Supplier without undue delay of any infringement of industrial property rights or copyrights asserted, the Purchaser supports the Supplier to a reasonable extent in defending the asserted claims or assists the Supplier in the performance of the obligations set forth in Section VIII.12. the Supplier retains the right to all defence measures, including out-of-court settlements, the defect of title is not based on an instruction of the Purchaser and the infringement of rights was not caused by the fact that the Purchaser modified the delivery item, in particular by processing it, or used it in a manner not in accordance with the contract.

## **VIII. Reservation of Ownership**

1. Ownership of the delivered item shall remain reserved until complete payment of all claims arising from the delivery contract. This shall also apply to all future deliveries, even if this is not always expressly referred to. The object of purchase can be taken back if the customer behaves contrary to the contract (in particular in case of default of payment).

2. As long as the ownership has not yet been transferred to the customer, he is obliged to treat the object of purchase with care. In particular, he is obliged to insure them sufficiently at his own expense against theft, fire and water damage as well as other damage at replacement value. If the Purchaser fails to furnish proof of insurance at the Supplier's request, the Supplier shall be entitled to insure the delivery item at the Purchaser's expense. If maintenance and inspection work has to be carried out, the customer must carry this out in good time at his own expense.
3. The customer is entitled to resell the reserved goods in the ordinary course of business. The customer hereby assigns to the supplier the claims against the customer arising from the resale of the reserved goods (including balance claims arising from current account agreements, from sales, from processing or combining the delivered goods) in the amount of the agreed final invoice amount (including value added tax); this also applies to claims of the customer relating to the reserved goods on other legal grounds (insurance, tort, etc.). The assignment shall apply irrespective of whether the purchased item has been resold without or after processing. The customer remains authorised to collect the claim even after the assignment. The supplier's authority to collect the claim itself remains unaffected by this. However, the latter shall not collect the claim as long as the purchaser meets his payment obligations from the proceeds received, is not in default of payment and, in particular, no petition for the opening of insolvency proceedings has been filed and payments have not been suspended. As soon as the customer does not fulfil a contractual obligation, he will disclose the assignment upon request and provide the necessary information and documents.
4. If a Customer of the Customer has effectively excluded the assignment of claims against itself, the Customer and the Supplier shall act internally as if the aforesaid claims assigned in advance had been effectively assigned to the Supplier; the Supplier shall be authorised by the Customer to assert the claims in its own name for its own account as soon as the Customer is no longer entitled to collect the claim in its own name in accordance with the above provision (Clause 3).
5. The treatment and processing/remodelling of the purchased item by the customer shall always be carried out on behalf of the supplier without any liabilities arising therefrom. If the object of sale is processed or mixed with other objects not belonging to the Supplier, the Supplier shall acquire co-ownership of the new object in the ratio of the objective value of the object of sale subject to retention of title to the other processed objects at the time of processing/mixing. If the connection/mixing takes place in such a way that the customer's item is to be regarded as the main item, it shall be deemed agreed that the customer transfers proportionate (co-)ownership to the supplier and stores the (co-)ownership thus created for the supplier. If the acquisition of (co-)ownership is legally prevented, the Purchaser shall assign his claim for compensation to the Supplier as a substitute. In order to secure the claims against the Purchaser, the Purchaser shall also assign to the Supplier such claims which accrue to it against a third party as a result of the combination of the reserved goods with real property; the Supplier shall accept such assignment.
6. The Supplier shall be entitled to demand appropriate securities for the proper fulfilment of the Purchaser's obligations. The supplier undertakes to release the securities to which he is entitled at the request of the customer if their value exceeds the claims to be secured by more than 20%.
7. The delivered goods may neither be pledged nor transferred by way of security without consent. In the event of access by third parties to the goods subject to retention of title, the customer shall point out the ownership on this side, inform the supplier immediately and provide all assistance necessary to safeguard the rights. Insofar as the third party is

not in a position or obliged to reimburse the court and out-of-court costs incurred as a result, the Purchaser shall indemnify the Supplier against such costs.

8. In the event of breach of contract by the customer - in particular in the event of default in payment - and credit unworthiness, immediate separation may be demanded. The Supplier shall be entitled to take back the delivery item and the Purchaser shall be obliged to surrender it. The Purchaser shall grant the Supplier or its agents access for collection and removal.
9. The petition for the opening of insolvency proceedings against the customer's assets shall entitle the customer to withdraw from the contract and to demand the immediate return of the delivery item.

## **IX. Liability**

1. If the delivery item cannot be used by the Purchaser in accordance with the contract through the fault of the Supplier as a result of omitted or faulty execution, proposals and consultations made before or after conclusion of the contract or as a result of a breach of other contractual ancillary obligations, the provisions of Sections VII and IX shall apply accordingly to the exclusion of further claims by the Purchaser.
2. The supplier shall only be liable for damages - irrespective of the legal basis - in the event of intent and gross negligence.
3. The Supplier shall only be liable for simple negligence - except in the case of injury to life, limb or health - if essential contractual obligations are breached. The liability is limited to the contract-typical and foreseeable damage.
4. Liability for indirect and unforeseeable damage, loss of production and use, loss of profit, loss of savings and financial loss due to claims by third parties is excluded in the case of simple negligence - except in the case of injury to life, limb or health.
5. Any further liability than in this contract - regardless of the legal nature of the asserted claim - is excluded. The foregoing limitations or exclusions of liability shall not, however, apply to any strict liability prescribed by law (e.g. in accordance with the Product Liability Act) or the liability arising from a strict guarantee.
6. Insofar as liability is excluded or limited pursuant to Sections 3 and 4, this shall also apply to the personal liability of the Supplier's employees, workers, representatives, organs and vicarious agents.
7. Further claims are excluded.

## **X. Limitation**

All claims of the customer - on whatever legal grounds - shall become statute-barred after 12 months. If the purchased item is used in multi-shift operation, the limitation period for claims based on defects shall be shortened accordingly. The statutory time limits shall apply to claims for damages.

## **XI. Special conditions for punched sheet plates**

1. If sheet plates are processed on the basis of the Buyer's drawings, descriptions or samples etc., the Buyer shall assume the sole guarantee that no third party property rights or copyrights shall be infringed upon as a result of the processing in the above-mentioned manner.

2. We shall not be liable if a slight rust film forms on the parts as a result of degreasing them or if sheet metals from a strength of 80 kg tear as a result of the processing and furthermore if fine holes are created in the full bath galvanisation with a zinc film.
3. We shall not be liable if minor imperfections are identified on borders during punching.
4. If the Buyer makes available to us the material to be processed, this shall as a result be hired work and these provisions apply by way of analogy and in addition the following apply:
5. Liability for defects is excluded for damage that is caused as a result of material defects in the provided material that are not acknowledged.
6. The Buyer is to make the material available freight-free and free of charges.
7. If material faults lead to increased production costs, our price may be increased accordingly. Scraps and cutting created during hired work are taken account in the determined price. Therefore, these are not remunerated separately and shall become our property.
8. Waste in the case of hired work involving plastics shall be sent to the Buyer at the Buyer's cost.
9. In the case of justified complaints, we shall be liable at most in the sum of the justified wage. We shall only acknowledge claims that extend beyond this – in particular for the supplied material – if we had previously assured further reaching liability in writing.

#### **XI. Place of Performance, Place of Jurisdiction, Applicable Law**

1. Place of performance for all obligations arising from the contractual relationship is the registered office of the supplier.
2. The place of jurisdiction shall be the Supplier's place of business if the Purchaser is a merchant, a legal entity under public law or a special fund under public law or has no general place of jurisdiction in the Federal Republic of Germany. However, the Supplier shall also be entitled to bring an action at the Purchaser's place of business.
3. All legal relationships between the Supplier and the Purchaser shall be governed exclusively by the law of the Federal Republic of Germany applicable to legal relationships between domestic parties to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
4. In the case of foreign business transactions, the application of §§ 305 - 310 BGB (German Civil Code) is additionally excluded.

#### **XII. Final Provisions**

1. The possible invalidity of individual provisions shall not affect the validity of the remaining provisions. An ineffective provision shall be replaced by a provision that comes closest to the economic purpose of the ineffective provision in a legally permissible manner.
2. There are no verbal side agreements. Amendments and supplements must be made in writing; this also applies to the written form clause itself.
3. Personal data of the customer are collected, processed and stored for the purpose of contract execution.

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