

Terms and conditions of sale and delivery.

A. Validity

1. These General Terms & Conditions of Business shall apply exclusively. Any deviating or contradictory conditions are not recognized unless Fulterer AG & Co KG (hereinafter: FULTERER) expressly accepts them in writing.
2. These General Terms & Conditions of Business shall also apply to all future transactions between the parties.

B. Offers, cost estimates and feasibility studies

1. Offers submitted by FULTERER are non-binding, unless they are expressly designated as binding. The PURCHASER's order shall only be considered accepted upon confirmation of the order, at which point a contract is concluded.
2. Unless something different is agreed, order modifications or additional orders may be invoiced at appropriate prices.
3. Although FULTERER draws up cost estimates and feasibility studies to the best of its expert knowledge, it cannot assume any liability for their correctness. Should cost increases of more than 15% result after the placement of the order, FULTERER shall immediately inform the client of this fact. If unavoidable cost increases of less than 15% occur, no separate notification is necessary and these costs may be invoiced without further ado.
4. FULTERER retains ownership, copy- and usage rights to all feasibility studies that it creates as well as to drawings, images, calculations, prospectuses, catalogs, models, tools or other documents and resources which it provides to the PURCHASER. Without FULTERER'S express permission, the PURCHASER may not make these items available to third parties either in whole or in part, disclose them, use them either directly or via third parties or duplicate them. It must return these items in their entirety at FULTERER'S request and destroy any copies made if these are no longer required by regular business operations or if the negotiations do not lead to the conclusion of a contract.
5. Cost estimates and feasibility studies are free of charge.

C. Confidentiality

1. The PURCHASER is obliged to maintain the confidentiality of all operating and business secrets and calculations bases and production processes made accessible, provided or otherwise disclosed to it by FULTERER in the context of the business relationship or contact and may not make them accessible to third parties in any manner without the authorization of FULTERER.
2. The confidentiality obligation shall continue to apply for 5 (five) years following the end of the business relationship.

D. Prices, payment

1. Prices are „ex works“ (INCOTERMS 2010) plus applicable VAT; they do not include transport and packaging. Partial invoices are permissible for partial deliveries.
2. The purchase price is due for payment within 30 days of invoicing. Legal default interest shall be applied after the due date.
3. In the event of default on payment, FULTERER shall be entitled to invoice to the PURCHASER all reasonable expenses arising from the latter's failure to fulfill its payment obligations, in particular any dunning and collection/attorney costs.
4. Any received payments shall first be offset against expenses and default interest.

E. Offsetting, retention

The PURCHASER shall only be entitled to offset claims if the counterclaims in question are undisputed or have been legally enforced. The PURCHASER shall only be entitled to a right of retention for counterclaims from the same contractual relationship.

F. Delivery, delivery delays

1. Delivery is conditional upon the prompt and proper completion of the agreed payment and cooperation obligations of the PURCHASER. Claims for failure to fulfill the agreement remain reserved.
2. The PURCHASER is obliged to accept the deliveries made available by FULTERER. The delivered goods are considered accepted upon delivery (ex works). Deliveries may always be subdivided. Partial acceptances are permitted for partial deliveries.
3. Excess or under-deliveries are permitted with variations up to 5(five)% – for special products with the acquisition of special materials up to 10 (ten)%; in such a case the purchase price shall be adjusted to correspond to the actual delivery quantity in aliquot parts.
4. In the event of a delay in acceptance or other culpable breach of cooperation obligations on the part of the PURCHASER, FULTERER shall be entitled to receive compensation for resulting damages including any additional costs. In such a case, the risk of the accidental loss or accidental degradation of the goods shall transfer to the PURCHASER at the time of the delay in acceptance or other breach of cooperation obligations.
5. Delivery periods or delivery deadlines shall only be binding if they were specifically agreed

as binding in this case by the client and FULTERER . In all other cases they shall be non-binding. A withdrawal from the contract by the PURCHASER due to a delay in delivery shall only be permitted subject to a suitable – at least four-week – subsequent period. Such a withdrawal must be made by means of a registered letter. The right of withdrawal involves only the portion of the delivery which is in default.

G. Place of fulfillment, assumption of risk, delay of acceptance

1. The place of fulfillment for the delivery and payment of the purchase price is 6890 Lustenau.
2. The risk of the accidental loss or accidental degradation of the good shall transfer to the PURCHASER upon acceptance (Point F. 2.), or in the event of the shipment of the good at the PURCHASER's request at the time of dispatch.
3. Goods which are not accepted on the agreed date shall be stored for a period of 6 (six) weeks at the PURCHASER's risk and expense, for which FULTERER shall invoice a net storage fee of EUR 10.00 per partial calendar day and pallet space. FULTERER shall also be entitled to insist on fulfillment of the contract or to withdraw from the contract and otherwise dispose of the good after establishing a suitable additional period.

H. Retention of ownership

1. Until full receipt of all payments, the good shall remain the property of FULTERER. In the event of a breach of contract by the PURCHASER, including default of payment, FULTERER shall be entitled to reclaim and/or recover the goods.
2. The PURCHASER must handle the goods with proper care, sufficiently insure it and if necessary maintain it.
3. If the purchase price is not fully paid, the PURCHASER must immediately inform FULTERER in writing of this fact if the item is burdened with third party rights or subject to other claims by third parties.
4. The PURCHASER is entitled to sell goods delivered subject to retention of title onwards in the course of regular business. In such a case, however, it immediately cedes all claims from any such onward sale to FULTERER, regardless of whether such a sale takes place before after any subsequent processing of the good delivered subject to retention of title. These claims following onward sale include claims against any bank which provides or confirms a letter of credit for the PURCHASER in the context of the onward sale. The cession is hereby accepted by FULTERER.

I. Warranty, guarantee

1. The warranty period is 6 (six) months.
2. The presence of defects must be demonstrated by the PURCHASER and claimed in detail and in writing, at the latest 14 days after delivery.
3. FULTERER is entitled, in the case of a warranty, to determine the type of warranty (remediation, exchange, price reduction or modification) at its discretion.
4. A guarantee of properties of the purchase object or sections thereof shall only be considered provided if it is expressly agreed in writing before the conclusion of the contract.
5. Sect. 933b Austrian Civil Code (ABGB) shall not apply.

J. Liability

1. FULTERER shall be liable for willful intent or gross negligence; if no willful breach of contract exists, liability for damages shall be limited according to the order amount (order value). FULTERER shall not be liable for indirect damages, lost profits, lost interest, foregone savings, subsequent and financial damages or damages from third party claims.
2. Liability for willful damage to life, body or health and liability under product liability laws shall not be affected by the aforementioned limitations.
3. Liability is excluded unless explicitly stated otherwise above.

K. Final provisions, applicable law, jurisdiction

1. The parties waive the right to dispute the contract due to errors, reduction by more than half or disappearance of the basis of the contract or to submit claims on this basis or to demand a reduction in price or amendment of the contract on this basis.
2. Should any provision of this contract be or become invalid, this shall not affect the validity of the remaining provisions. In such cases the parties are obliged to replace the invalid provision by one which most closely approximates its economic intent.
3. Amendments to the contract must be in writing; this shall also apply to any waiver of the requirement of the written form.
4. The use of subcontractors is permitted in any case.
5. This contract is subject to the laws of the Republic of Austria. The provisions of the UN-CISG shall apply subsidiarily to these General Terms & Conditions of Business, the Austrian Company Code (UGB) and the ABGB.
6. The place of jurisdiction for all disputes arising from or relating to this contract is 6890 Lustenau, Austria.