

General Terms and Conditions for Deliveries**§ 1 Scope**

(1) All deliveries, services and offers of FDK Electronics GmbH (in the following “**FDK**”) shall be subject exclusively to these General Terms and Conditions. These shall form a component part of all contracts concluded by FDK with a contracting party (hereinafter also referred to as the “**Customer**”) for deliveries or services provided by FDK and shall also apply to any future deliveries, services or offers to the Customer, even if not specifically agreed again.

(2) These General Terms and Conditions shall only apply if the Customer is an entrepreneur (§ 14 of the German Civil Code – “**BGB**”), a legal entity under public law or a special fund under public law.

(3) The standard terms and conditions of the Customer or a third party shall not be accepted even if FDK fails to object to them specifically in each case.

§ 2 Offer and conclusion of contract

(1) All offers of FDK shall be subject to change and without obligation, unless expressly indicated as binding or containing a specific date of acceptance. Orders and assignments may be accepted by FDK within a fortnight from their receipt. Acceptance shall always be in writing (e.g. by order confirmation).

(2) All legal relations between FDK and the Customer shall be governed exclusively by the written purchase contract including these General Terms and Conditions. The contract shall fully reflect all agreements made between the contracting parties in regard to the subject matter of the contract. Verbal commitments of FDK prior to conclusion of this contract shall not be legally binding; verbal agreements between the contracting parties shall be superseded by the written contract unless these expressly specify in each case that they shall remain in force. Additions and modifications to agreements reached (including these General Terms and Conditions) shall be required in writing to be legally effective. With the exception of the management or authorised representatives of the company, the employees of FDK shall not be authorised to make deviant verbal agreements to the written purchase contract and these General Terms and Conditions. Transmission using telecommunication by fax or email shall be deemed in compliance with the requirement of written form when a copy of the signed declaration will be transmitted.

(3) Specifics provided by FDK in regard to the goods delivered or the service provided (e.g. weights, dimensions, practical values, capacities, tolerances and technical data) and any representations of these (e.g. drawings and illustrations) shall be approximates only unless their usability for the purpose specified in the contract requires exact specifics. They shall not be guaranteed characteristics of state (“*Beschaffenheitsmerkmale*”) but merely describe or identify the delivery or service. Standard variances and variances due to legal requirements or technical improvements, and the replacement of components with equivalent parts shall be permissible where these do not impair their usability for the purpose specified in the contract.

§ 3 Prices and payment

(1) Prices shall be applicable to the scope of services and delivery specified in the order confirmations. Additional or special services shall be charged separately. Unless otherwise agreed upon, all prices shall be quoted in EURO and EXW according to the INCOTERMS 2020, which is indicated in the order confirmation, excluding packaging, statutory value added tax and, for exports, excluding duties and charges or any other public levies.

(2) Where the prices agreed are based on the list prices of FDK and delivery is not made until at least four months after conclusion of the contract, the list prices of FDK valid on delivery shall be applicable (less any percentage or fixed discount agreed in each case).

(3) In the absence of a written agreement to the contrary, the amounts invoiced shall be payable within thirty days without deductions. Upon expiry of the above payment period, the Customer shall be in default. During the period of default, interest shall be charged on the purchase price at the statutory default interest rate applicable at the time. FDK reserves the right to claim further damages caused by default.

(4) FDK shall be entitled at any time, even within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. FDK shall declare a corresponding reservation at the latest upon confirmation of the order.

(5) Counterclaims of the Customer which are not in a relationship of mutuality with the payment claim of FDK may only be offset or payments withheld on account of any such claims where these counterclaims are uncontested or have become res judicata.

(6) FDK shall be entitled to conduct outstanding deliveries or services only after advance payment or the provision of security if after conclusion of the contract FDK becomes aware of circumstances which may considerably reduce the creditworthiness of the Customer and thus jeopardise the ability of the latter to pay debt due to FDK under the relevant contractual relations (including other individual contracts governed by the same framework contract).

§ 4 Delivery and delivery period

(1) Unless otherwise agreed upon, all deliveries shall be ex works/stock (EXW), according to the INCOTERMS 2020 from the work or stock of FDK or its affiliated companies indicated in the order confirmation.

(2) All periods and dates put forward by FDK for deliveries and services shall be approximates only unless a fixed period or date has been specifically confirmed or agreed. Where shipment has been agreed, the delivery periods and dates shall refer to the time of delivery to the forwarding agent, carrier or any other third party handling the transport.

(3) Without prejudice to its rights arising from default of the Customer, FDK shall be entitled to request that the Customer extend the agreed period of performance or postpone the dates for delivery or provision of services for the period in which the Customer has not complied with its contractual obligations toward FDK.

(4) FDK shall not be held liable for impossibility (“*Unmöglichkeit*”) of delivery or for delays caused by force majeure or any other events that were not foreseeable when the contract was concluded (e.g. industrial disputes, disruption of operations of any kind, difficulties in the supply of material or energy, transport delays, strikes, legal lockouts, shortage of labour, energy or raw materials, difficulties in procuring the required permits, measures imposed by authorities, or overdue, incorrect or late deliveries from suppliers, unrest, warlike or terrorist conflicts, natural disasters, epidemics as well as epidemics or pandemics (including COVID 19) and for which FDK cannot be held responsible. Where any of these events significantly impedes the delivery or provision of services by FDK and is not of a temporary nature, FDK shall have the right to withdraw from the contract. Where hindrances are temporary, the periods of delivery or for provision of services shall be extended or postponed by the period of hindrance and an appropriate start-up period. Where acceptance of delivery or services cannot be reasonably expected on account of the delay, the Customer may withdraw from the contract by notifying FDK immediately in writing.

§ 5 Place of performance, shipment, packaging, passage of risk

- (1) The place of performance for any obligations under the contract shall be Munich.
- (2) The mode of shipment and the packaging shall be decided by FDK after due assessment of the circumstances.
- (3) The risk shall pass to the Customer once the goods to be delivered are handed to the forwarding agent, carrier or any other third party handling the shipment. The same shall apply to part deliveries or any other services to which FDK has agreed (e.g. shipment or installation). Where the shipment or handover is delayed due to circumstances for which the Customer is responsible, the risk shall pass to the Customer on the day on which the goods are ready for shipment and the Seller has notified the Customer accordingly.

§ 6 Warranty

- (1) The warranty period shall be one year from delivery or, where acceptance is required, from acceptance.
- (2) Promptly after delivery to the Customer or a third party specified by it, the goods delivered shall be carefully examined. They shall be deemed accepted unless FDK is notified within seven working days from delivery of the goods of obvious defects or of any other defect identified during a prompt and careful examination, or within seven working days from discovery of the defect or the time when the defect was noticed by the Customer during normal use of the goods delivered.
- (3) In the event of material defects relating to the goods delivered, FDK shall initially be obliged and entitled at its discretion to rectify the defects or provide a replacement within a reasonable period of time. Where unsuccessful, i.e. where rectification or replacement is impossible, unacceptable, refused or causes undue delay, the Customer shall be entitled to withdraw from the contract or reduce the purchase price accordingly.
- (4) Where the goods delivered violate an industrial property right or copyright of a third party, FDK shall, at its discretion and expense, change or replace these goods such

that they no longer violate any third-party rights but continue to perform the function agreed by contract, or provide the Customer with the right of use through conclusion of a licence agreement. Where FDK fails to do so within a specific period, the Customer shall be entitled to withdraw from the contract or reduce the purchase price accordingly.

(5) The obligation of FDK under § 6 para. 4 does not apply with respect to any goods or portion thereof which are made in accordance with Customer specifications or requests. The same applies in case a violation of an industrial property right or copyright of a third party is due to a modification made by the Customer or is a result of a combination, processing or usage of the delivered goods with other products, processes or materials which were not provided by FDK.

(6) Where the FDK is responsible for a defect, the Customer shall have the right to demand payment of damages as specified in § 7. By way of derogation from § 6 para. 1 damage claims based on injuries of life, body and health and in cases where the damage is caused by gross negligence or wilful conduct shall become time barred in accordance with the statutory provisions

§ 7 Liability

(1) The liability of FDK for damages irrespective of the cause in law, specifically on grounds of impossibility, default, bad or incorrect delivery, breach of contract, violation of obligations during contract negotiations and tortuous acts, where these are based on fault, shall be limited as specified under this § 7.

(2) FDK shall not be liable for simple negligence of its executive bodies, legal representatives, employees or any other vicarious agents unless it relates to the violation of material contractual obligations. Material contractual obligations shall include timely delivery of the delivery item, its lack of defects which impair its functionality and usability not only insignificantly along with the duty to provide advice, to protect and to exercise proper care, in order to enable the Customer to use the goods delivered as stipulated and to protect life and body of employees of the Customer or their property from considerable damage.

(3) Where FDK is liable on the merits for payment of damages in accordance with § 7 para. 2, this liability shall be limited to damage which, on conclusion of the contract, FDK foresaw as a potential consequence of a breach of contract or should have foreseen exercising due care and attention if FDK had taken into account the circumstances. Indirect damage and consequential damage as a result of defects of the goods delivered shall also be eligible for compensation only where such damage can typically be expected if used as intended.

(4) In the event of liability for simple negligence, the liability of FDK to pay damages for damage to property or further property loss resulting from such damages shall be limited per claim to the contract specific foreseeable damage (“*vorhersehbarer vertragstypischer Schaden*”), even where a violation of material contractual obligations is involved.

(5) The above exclusions and limitations of liability shall apply to the same extent to the executive bodies, legal representatives, employees and other vicarious agents of FDK.

(6) Where FDK provides technical information or acts as a consultant without such information or consulting service being included in the contracted scope of services to be

rendered by it, this service shall be provided without cost and to the exclusion of all liabilities.

(7) The restrictions of this § 7 shall not apply to liability of FDK based on wilful conduct, for guaranteed characteristics of state, due to loss of life or injury to body or health, or under the Product Liability Act.

§ 8 Retention of title

(1) The retention of title agreed in the following shall serve to secure all currently existing and future claims of FDK against the Customer under the supply relationship between the contracting parties (including balance claims based on an open account relationship restricted to this delivery agreement).

(2) The goods of FDK delivered to the Customer shall remain the property of FDK until full payment of all secured claims. These goods and those replacing them under this clause as subject to the retention of title shall hereinafter be referred to as “**goods subject to retention of title**”.

(3) The Customer shall store the goods subject to retention of title without cost to FDK.

(4) The Customer shall be authorised to process or re-sell the goods subject to retention of title in its ordinary course of business until realisation (§ 8 para. 8). Pledging and assignment as security shall not be permitted.

(5) Where the goods subject to retention of title are resold, the Customer shall hereby transfer to FDK as collateral all claims arising against the purchasing party – in case of co-ownership of FDK in the goods subject to retention of title, prorated according to the co-owner's share. Until revoked, FDK shall authorise the Customer to collect any claims assigned to FDK in its own name for the account of FDK. FDK shall revoke this collection authorisation only in case of realisation.

(6) Where the goods subject to retention of title are seized by third parties, specifically through attachment (“*Pfändung*”), the Customer shall promptly advise these third parties of the ownership of FDK and notify FDK accordingly in order to enable FDK to exercise its property rights. Where the third party is unable to reimburse FDK for any judicial and extra-judicial costs incurred in this connection, the Customer shall be held liable vis-à-vis FDK.

(7) On request, FDK shall release the goods subject to retention of title and the items or claims taking their place at its own option where their value exceeds the amount of secured claims by more than 50%.

(8) Where FDK withdraws from the contract due to breach of contract on the part of the Customer (realisation), including but not limited to default FDK shall be entitled to demand the return of the goods subject to retention of title.

§ 9 Confidentiality

The Customer shall keep confidential and not disclose to any third party any business and trade secrets and other confidential information, including but not limited, to prices and technical documents, disclosed to the Customer in connection with its business relationship to FDK. This confidentiality obligation shall also apply if the Customer has not taken appropriate confidentiality measures in the sense of § 2 No. 1 b) of the German Trade Secrets Act (“**GeschGehG**”) in individual cases.

§ 10 Final provisions

(1) Exclusive place of jurisdiction for any disputes arising from the business relations between FDK and the Customer shall be Munich. However, FDK shall also be entitled to sue the Customer at its general place of jurisdiction.

(2) All relations between FDK and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

(3) Where the contract or these General Terms and Conditions contain loopholes, these loopholes shall be deemed filled by legally effective provisions which the contracting parties would have agreed on the basis of the economic objectives of the contract and the spirit and purpose of these General Terms and Conditions if the loopholes had been known.

(4) These General Terms and Conditions for delivery are drafted in the English and German language. The English version is only a convenience translation of the German version. In case of any discrepancy between the English and the German version, the German version shall prevail.

Status: October 2020