

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

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

(2) These General Terms and Conditions of Purchase shall only apply if the Seller is an entrepreneur (section 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 Seller or a third party shall not be accepted even if FDK fails to object to them specifically in each case.

§ 2 Conclusion of Contract

(1) Unless a specific period of commitment has been agreed, offers of FDK shall be valid for one week from their date. Offers shall be deemed accepted in time if confirmation of acceptance reaches FDK within this period. Delayed acceptance shall be deemed a new offer by the Seller and requires acceptance by FDK.

(2) All legal relations between FDK and the Seller shall be governed exclusively by the written purchase contract including these General Terms and Conditions for Purchase. 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to conclusion of this contract shall not be legally binding; verbal agreements between the contracting parties shall be superseded by the written contract unless these expressly specify in each case that they shall remain in force.

(3) Additions and modifications to agreements reached (including these General Terms and Conditions) shall be 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 telecommunications 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 Price and Terms of Payment

(1) The price of the order or the Seller’s offer as accepted by FDK shall be binding. Prices as agreed upon shall be free domicile (“frei Haus”) and include the cost of packing, transportation and VAT. In the event that, contrary to sentence 2, FDK has to bear the transport costs, the Seller shall choose the most cost-effective shipping method, unless FDK specifies a special mode of transport.

(2) Payment shall be made in the manner and at the time or times agreed by the parties. If not agreed upon otherwise, payment for the delivery shall be made within 14 calendar

days after delivery and receipt of invoice with a 2% discount or within 30 days net.

(3) The receipt of the transfer order at FDK’s bank shall be sufficient for the timeliness of the payments owed by FDK.

(4) In the event of late payment, FDK shall owe interest on arrears at a rate of 5 percentage points above the respective base interest rate in accordance with section 247 BGB.

§ 4 Delivery

(1) Delivery shall be effected on due date as fixed in the contract or the purchase order being subject to the contract.

(2) Partial deliveries are only permissible if explicitly agreed in writing. In case of agreed partial deliveries, the remaining quantity must be listed.

(3) Counterclaims of the Seller which are not in a relationship of mutuality with the claim of FDK may only be offset or withholdings on account of any such claims may only be admissible where these counterclaims are uncontested or have become res judicata.

(4) If the Seller is likely to be unable to meet agreed delivery times - for whatever reason - in whole or in part, the Seller shall be obliged to notify FDK immediately in writing, stating the reasons and the expected duration of the delay. In the event of a complete or partial delay in delivery due to force majeure, or other events that could not be foreseen at the time of the conclusion of the contract, such as, in particular, industrial disputes, unrest, warlike or terrorist conflicts, natural disasters, epidemics as well as epidemics or pandemics (including COVID 19), which, irrespective of any legal or official restrictions or requirements, result in unforeseeable consequences for the performance of services, the Seller shall only be released from its performance obligations for the duration of the disturbance and to the extent of its effect. He shall not be in default with regard to the obligations affected by force majeure. An automatic termination of the contract is not associated with this. The Seller shall, adapted to the changed circumstances and in close coordination with FDK, fulfil its performance obligations towards FDK at the next possible date. Only in the event of a longer-term hindrance to delivery shall FDK be released in whole or in part from its obligation to accept the delivery and/or service ordered and shall be entitled to withdraw from the contract to this extent if the delay caused by force majeure, taking into account economic aspects, excludes the usability of the delivery and/or service at FDK.

(5) Notwithstanding the provisions in para. 4, if the Seller does not perform its services or does not perform them within the agreed delivery period or is in default, FDK’s rights - in particular the right of withdrawal and the right to claim damages - shall be subject to the statutory provisions. The provisions in para. 6 shall remain unaffected.

(6) In case of default in delivery, FDK is entitled to demand liquidated default damages amounting to 0.5% of the delivery value per week or part week, up to a total amount of not more than 5% of the delivery value. The right to make further claims is reserved. The claim of FDK to liquidated damages will reduce to the extent that the Seller can provide evidence that FDK has incurred no or a significantly lower damage as a consequence of the default.

§ 5 Transfer of Risks/Incoming Inspection

- (1) Save as provided in an individual contractual agreement the time at which the risk shall pass shall be fixed in accordance with INCOTERMS 2020. If not agreed otherwise, the goods shall be sold DDP München (“delivery duty paid”).
- (2) As far as it is practicable in the proper course of business FDK will subject the items delivered to an incoming goods inspection, and notify the Seller of any defects found within two calendar weeks after receipt by the place of the delivery. In case of defects which only become evident after the incoming goods inspection, FDK will notify the Seller within two calendar weeks of their discovery.
- (3) The statute of limitations for warranty claims shall be suspended where the Seller receives notification of defects from FDK. In case of delivery of replacements and removal of defects, the warranty period for replaced and repaired parts shall restart unless the conduct of the Seller suggests that replacement was provided or defects removed by the Seller merely as a courtesy or for similar reasons, not based on obligation.

§ 6 Warranties

- (1) The Seller warrants that all items delivered under this Agreement will be free from defects in material and workmanship in particular be conform with the applicable laws and regulations and the indicated specifications, and is suitable for the purposes intended by FDK.
- (2) FDK is entitled to unrestricted statutory warranty claims. Seller’s warranties hereunder shall extend to any defect or non-conformity arising or manifesting itself within 36 months after delivery. With respect to items not in accordance with any such warranties, FDK, without waiving any right or remedies provided by law and/or elsewhere under these General Terms and Conditions for Purchase may require the Seller to correct or replace such items or refund such portion of the price as is equitable under the circumstances.
- (3) If the Seller is responsible for a personal or product damage, the Seller has to indemnify FDK upon first demand as far as the cause is based on the Seller sphere of organisation and influence and to the extent that the Seller is externally liable vis-à-vis the third party.
- (4) The Seller shall be responsible that in connection with its delivery industrial property rights of third parties were not infringed in countries of the European Union and other countries in which the seller produces or let produce its products.
- (5) In case of defect of title pursuant to para. 4, the Seller is obliged to indemnify FDK from claims of third party as a result of the violation of rights, in particular industrial property rights or application for industrial property rights, through use in accordance with the contract of the items delivered. Such claim does not arise as far as the Seller proves that he is neither responsible for the infringement of the industrial property right nor could have become aware of it upon application of the required commercial care. This does not affect any further statutory claims of FDK resulting from the defect of title.
- (6) Any items corrected or replaced shall be subject to the provisions of these General Terms and Conditions of Purchase in the same manner as those originally delivered hereunder.

- (7) The Seller is obliged to contract a product liability insurance with an insured sum of EUR 10,000,000.00 for each case of material damage/damage to persons (“Personen-/Sachschaden”). In absence to an individual agreement to the contrary, the product liability insurance to be concluded shall cover damages, which can usually or typically be expected. Upon requirement FDK shall be provided with a copy of the product liability insurance.

§ 7 Protection of Ownership

- (1) FDK shall retain ownership of, or the copyright, in any orders and contracts submitted by FDK and any drawings, illustrations, calculations, descriptions and other documents presented to the Seller. The Seller shall not be permitted to make these available to third parties without FDK’s prior consent nor, copy or use these or permit use by a third party. The Seller shall return all documents at FDK’s request where they are no longer needed in the ordinary course of business or where negotiations fail to produce a contract.
- (2) Retentions of title by the Seller shall only be permitted where these relate to FDK’s obligation to pay for the relevant products in which the Seller retains ownership. Specifically, extended or prolonged retentions of title shall not be permitted.

§ 8 Supplier Recourse

- (1) FDK shall be entitled to the legally determined rights of recourse of FDK within a supply chain (supplier recourse according to sections 445a, 445b, 478 BGB) without limitation in addition to the claims for defects. In particular, FDK shall be entitled to demand from the Seller exactly the type of subsequent performance (repair or replacement) that FDK owes its customer in the individual case. FDK’s statutory right of choice (section 439 para. 1 BGB) shall not be limited thereby.
- (2) Before FDK recognizes or fulfills a claim for defects asserted by its customer (including reimbursement of expenses pursuant to sections 445a para. 1, 439 para. 2 and 3 BGB), FDK shall notify the Seller and request a written statement, giving a brief description of the facts of the case. If a substantiated statement is not submitted within a reasonable period of time and if no amicable solution is reached, the claim for defects actually granted by FDK shall be deemed to be owed to FDK’s customer. In this case, the Seller shall be responsible for providing proof to the contrary.
- (3) FDK’s claims from supplier recourse shall also apply if the defective goods have been further processed by FDK or another party, e.g. by installation in another product.

§ 9 Confidentiality

The Customer shall keep confidential and not disclose to any third party any trade secrets and other confidential documents and information (publicly available information excluded), 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 FDK has not taken appropriate confidentiality measures in the sense of section 2 No. 1 b) of the German Trade Secrets Act (“**GeschGehG**”) in individual cases.

§ 10 Final Provisions



FDK ELECTRONICS GMBH

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- (1) Place of delivery for all obligations resulting from the contractual relationship shall be Munich.
- (2) Exclusive place of jurisdiction for any disputes arising from the business relations between FDK and the Seller shall be Munich. However, FDK shall also be entitled to sue the Seller at its general place of jurisdiction.
- (3) All relations between FDK and the Seller 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.
- (4) Where the contract or these General Terms and Conditions of Purchase 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 of Purchase if the loopholes had been known.
- (5) These General Terms and Conditions of Purchase 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