

# General Terms and Conditions of sale, delivery and service

September 2024

## 1. General Information

These General Terms and Conditions of sale, delivery and service (the “**T&Cs**”) shall apply to all transactions, deliveries and services between FAMETEC GmbH, Ebner Platz 1, 4060 Leonding, Austria (the “**Seller**”) and customers that are purchasing goods or services from the Seller (the “**Buyer**”). The T&Cs shall be deemed an integral part of the contract concluded between the Buyer and the Seller (the “**Contract**”) and shall also apply to all future business transactions of the Seller, in particular, to spare parts orders, even if they have not been expressly agreed. The Buyer’s terms and conditions shall not become part of the Contract even if the Seller does not expressly object to them upon acceptance of the order. The Contract is deemed concluded once the Seller has sent a written order confirmation or consigned a delivery after receipt of the order.

## 2. Offer

**2.1** Unless otherwise agreed, all offers of the Seller are non-binding.

**2.2** Any documentation regarding offers and projects must neither be reproduced nor made available to third parties without the Seller’s prior written consent. The return of such documents may be requested at any time by the Seller.

**2.3** The Seller shall be entitled to adjust the prices offered if there are changes with regard to (i) labour costs, or (ii) the prices of raw materials, material costs, transport costs, exchange rates, import duties or other costs for the provision of goods and services.

## 3. Delivery

**3.1** Unless otherwise agreed, the delivery of the goods shall be deemed sold EXW Leonding, Austria, according to INCOTERMS® 2020. The place of performance of services is the place specified in the written order confirmation. The risk of loss and damage for loading shall pass to the Buyer at the time of delivery.

**3.2** The delivery period shall commence on the latest of the following dates

- i) Date of order confirmation by the Seller;
- ii) Date of fulfilment of all technical, commercial and other requirements incumbent upon the Buyer; or
- iii) Date on which the Seller receives an agreed advance payment or security that needs to be provided by the Buyer before delivery of the goods or services.

**3.3** The delivery time shall only be binding as a fixed date if it has been expressly agreed, otherwise the delivery

time shall not be binding. In the event of changes to the scope of delivery/services, the delivery/service period shall be extended accordingly.

**3.4** 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 at the Buyer’s expense. 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 (thirty) 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 the Buyer.

**3.5** 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.

**3.6** 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 and delivered at the latest 6 (six) months after the order was placed.

**3.7** If deliveries/services are delayed due to unforeseeable circumstances, including all Force Majeure Events, for which the Seller is not responsible, the Seller shall not be liable for the delay and the delivery period shall be extended by the duration of such circumstances. The Seller shall be released from its obligation to perform, in whole or as far as possible in part, to the extent that the non-performance is due to a Force Majeure Event. A “**Force Majeure Event**” shall include social conflicts (strikes and lock-outs), armed conflicts, official interventions and bans, transport and customs delays, transport damage, non-availability of means of transportation, shortage of power and raw materials, acts of government, embargo, war, civil disturbances, terrorism, epidemics, natural calamities, industrial disputes, cyberattacks, the loss of a crucial supplier that is difficult to replace and any other events that cannot reasonably be prevented by the Seller. This also applies when sub-contractors of the Seller are affected by such events.

**3.8** 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.

**3.9** 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.

**3.10** The Seller shall be entitled to use subcontractors with regard to all deliveries and services.

#### **4. Payment**

**4.1** The Seller shall be entitled to submit invoices electronically. Unless otherwise agreed, all invoices issued by the Seller shall be due within 30 (thirty) days of receipt by the Buyer. Prices are net and – unless otherwise agreed – ex works without packaging, without insurance and without loading. A payment shall be deemed made on the date the Seller is able to dispose of the amount paid.

**4.2** 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.

**4.3** Payments shall be made to the Seller's bank account in the currency agreed in an individual Contract or on the 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.

**4.4** The Buyer shall not be entitled to retain or offset payments on account of warranty claims or other counter-claims.

**4.5** 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,

- i) 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
- ii) 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; and/or
- iii) perform other legal transactions only against cash in advance; and/or
- iv) withdraw from the Contract and take back the goods.

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.

**4.6** Unless otherwise agreed, the Buyer shall bear and pay all taxes, charges, fees, customs duties etc. levied by authorities 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 keep the Seller harmless.

#### **5. Reservation of Title**

**5.1** The Seller shall retain title to all goods delivered until full payment of the amounts invoiced plus interest and costs.

**5.2** 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 located does not provide for a retention of title, the Seller shall be entitled to demand any other comparable security.

#### **6. Warranty**

**6.1** In case of defects of the object of purchase, the Seller shall only be liable in accordance with the following provisions to the exclusion of further claims.

**6.2** The Seller warrants that upon delivery the goods/services 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. In particular, the Seller is not liable for a certain extent of good body material or any kind of processability of the goods.

**6.3** The warranty period for the goods/services shall be 12 (twelve) months and shall start from the date of delivery of the goods/services from Seller's or its sub-suppliers' site, 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.

**6.4** The warranty claim is contingent upon the prerequisite that the Buyer has immediately, at the latest within 7 (seven) days from delivery, reported any defects that have occurred in writing and that the Seller receives this report. Any legal reversal of the burden of proof regarding the existence of a defect is excluded. The Buyer shall provide evidence that the defect is existing and has existed at the time of delivery.

**6.5** In the event of a defect subject to the warranty obligation under item 6.1, the Seller shall, at its sole 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.

**6.6** The warranty period for replaced or repaired components shall expire on the same date as the warranty period for the main delivery.

**6.7** 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.

**6.8** 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.

**6.9** 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.

**6.10** 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. Limitation of Liability**

**7.1** The Seller's overall liability under or in connection with the legal relationship between the Buyer and the Seller under whatever title, whether arising out of a breach of contract, tort (including but not limited to negligence) or otherwise, shall be limited to the lower of 25 % (twenty-five percent) of the net contract value of the individual sales contract or EUR 500,000 (five hundred thousand Euros) per event of loss. Any legal reversal of the burden of proof for the existence of fault on the part of the seller is excluded. The Buyer shall provide evidence that the Seller is at fault.

**7.2** Any liability of the Seller for slight negligence (with the exception of personal injury) and compensation for consequential damage, indirect consequential damage, pure financial loss, indirect loss, production downtime, cost of financing, cost of substitute power, loss of power, loss of data or information, lost profit, savings not achieved, interest losses and losses from third-party claims asserted against the Buyer shall be excluded.

**7.3** 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.

**7.4** If contractual penalties have been agreed, any claims of the Buyer beyond that arising from the relevant title shall be excluded.

**7.5** 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

proofs that the defect was caused in Seller's sphere and by gross negligence.

**7.6** The provisions 6. and 7. of these T&Cs shall finally settle all claims of the Buyer against 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. Any claims asserted by the Buyer for *laesio enormis*, error and frustration of contract shall be excluded.

## **8. Confidentiality**

The Buyer expressly undertakes to keep secret the drawings, technical and commercial information, physical items, documents, data provided by the Seller and all business secrets of 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.

## **9. Intellectual Property Rights**

**9.1** 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 intellectual property rights.

**9.2** 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 the purpose as defined in the individual sales contracts.

## **10. Termination rights**

**10.1** Notwithstanding any other rights, the Seller shall be entitled to terminate the contract in whole or in part immediately by unilateral written declaration if

- i) the execution of the delivery and/or commencement or continuation of the performance becomes impossible for reasons outside the sphere of the Seller or within the sphere of responsibility of the Buyer or is delayed despite an appropriate period of grace being granted,
- ii) 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 provides suitable security before delivery,
- iii) 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,
- iv) the delivery period is extended due to a Force Majeure Event for more than half of the delivery period originally agreed, but for at least 6 (six) months, or
- v) the Buyer does not or not duly meet the obligations imposed upon it under item 11.

**10.2** Notwithstanding the Seller's compensation claims including pre-trial costs, in the event of termination, 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.

## **11. Compliance with export regulations**

**11.1** 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.

**11.2** 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.

**11.3** 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.

**11.4** The Buyer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with the contract that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.

**11.5** The Buyer shall not sell, export or re-export, directly or indirectly, to the Republic of Belarus or for use in the Republic of Belarus any goods supplied under or in connection with the contract that fall under the scope of Article 8g of Council Regulation (EC) No 765/2006.

**11.6** The Buyer shall undertake its best efforts to ensure that the purpose of Section 11.4 and Section 11.5 is not frustrated by any third parties further down the commercial chain, including by possible resellers.

**11.7** The Buyer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of Section 11.4 and Section 11.5.

**11.8** Any violation of Section 11.4, 11.5, 11.6 or 11.7 shall constitute a material breach of an essential element of

the contract, and the Seller shall be entitled to seek appropriate remedies, including, but not limited to:

- i) immediate right of termination of the contract and
- ii) a penalty of 5 % of the total value of the contract.

**11.9** The Buyer shall immediately inform the Seller about any problems in applying Section 11.4, 11.5, 11.6 or 11.7 including any relevant activities by third parties that could frustrate the purpose of Section 11.4 and / or 11.5. The Buyer shall make available to the Seller information concerning compliance with the obligations under Section 11.4, 11.5, 11.6 or 11.7 within two weeks of the simple request of such information.

## **12. Place of jurisdiction and applicable law**

**12.1** All disputes or claims arising out of or in connection with the legal relationship between the Buyer and the Seller, 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.

**12.2** 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.

**12.3** All claims of the Buyer shall be asserted in court within 6 (six) months after delivery or performance of the services, otherwise they shall be forfeited, unless other deadlines are provided for by mandatory statutory provisions.

## **13. Miscellaneous**

**13.1** Any subsequent amendments and supplements to these T&Cs shall be made in writing in order to be effective.

**13.2** If individual provisions of the Contract or these T&Cs 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.

**13.3** 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.