

1. Scope of validity

- 1.1. If no other agreement is made in writing, the following General Conditions of Purchase (GCPs) shall apply exclusively for our orders – also in the future. General terms and conditions of the supplier which conflict with or deviate from these GCPs are not recognized, unless we have agreed to the general terms and conditions in individual cases in writing. These GCPs shall also apply if we accept deliveries or services regardless of the existence of general terms and conditions of the supplier that conflict with or deviate from these GCPs.
- 1.2. These GCPs shall be valid only for individuals who, at the time of signing the agreement, are acting in their commercial or independent capacity (“entrepreneur”) as well as for legal entities under public law or special assets under public law. They do not apply to natural persons who conclude the contract for purposes which cannot predominantly be attributed to either their commercial or their independent professional activity (“consumer”).

2. Entering into the agreement

21. Only orders and agreements made in writing are binding. In particular, our employees are obliged to confirm in writing verbal agreements or commitments that go beyond the content of the written agreement or modify these GCPs to our detriment.
22. The supplier must confirm the order immediately in writing. A late confirmation of the order is considered a new offer and requires acceptance by us.
23. If the supplier has reservations about the type of execution requested by us, these must be communicated to us immediately in writing.

3. Delivery and delay in delivery

31. The agreed delivery period is binding. The receipt of the goods at our plant in D-77716 Haslach or at an otherwise agreed upon delivery site shall determine whether the delivery deadline has been met.
32. All deliveries must be accompanied by delivery notes with the details of our order number, our order code, the type of packaging and the quantity and weight of the delivery.
33. The invoice must be sent separately for each order in duplicate after delivery to our address; it may not accompany the delivery.
34. Until receipt of the delivery and shipping documents by us, the supplier has not fulfilled the delivery. For this period, we are entitled to store the delivery at the risk and expense of the supplier.
35. As soon as the supplier determines that timely delivery and/or service (hereinafter referred to as delivery) is not possible in whole or in part, we must be advised of this immediately, including specification of the reasons and the expected duration of the delay, at the latest, however, after 3 working days.
36. Partial deliveries are only permitted if we have agreed to this in writing.
In the event of delay in delivery, we are entitled to demand for each completed week of delay 1.0%, but in total no more than 5%, of the declared value of goods to be delivered. This contractual penalty can be enforced until the final payment. Further legal rights remain unaffected. The supplier is at liberty to prove the loss incurred was less than the contractual penalty.

4. Information obligations

41. Before changing any manufacturing processes, materials or supplied parts for the products, relocation of manufacturing sites, or changes to processes and facilities for testing the products or for quality assurance measures, the supplier will notify us in time for us to be able to check whether the change could adversely affect performance.

42. Before employing or changing a subcontractor, our written agreement is required. This subcontractor must also commit to these GCPs.
43. If adverse effects cannot be ruled out, the supplier must guarantee our delivery with unchanged parts, until we have found an alternative solution.

5. Prices and payment

51. In the absence of a special agreement, the specified prices are understood to be based on “delivered, duty paid” (DDP in accordance with Incoterms 2010). Prices include all services associated with the delivery of the goods, in particular packaging and transport to the agreed place (free delivered).
52. Unless otherwise agreed in writing by individual contract, the payment is to be made within 14 days after receipt of goods and invoice with 3% discount or within 60 days net.
53. Payment is subject to invoice verification. If delivered goods are found to be defective, we are entitled to exercise a right of retention. Payments do not constitute recognition of completion of performance or waiver of counterclaims. This also applies to the confirmation of receipt.

6. Transfer of risk

The risk passes to us upon delivery of the goods to the destination specified in our order. If the order does not specify the destination, in accordance with Section 13.1 the place of performance is the destination.

7. Packaging

The goods are to be packaged according to normal trade practice or with special packaging according to our instructions. Costs incurred due to failure to follow our shipping instructions or packing instructions will not be accepted by us. Insofar as the supplier is obliged by law to take back packaging, this must be retrieved from us at the supplier’s own expense. If the supplier wishes the packaging to be returned, the supplier will bear shipping costs.

8. Claims arising from defects, technical requirements, replacement parts, safety regulations

81. The period of limitation for claims based on defects is 36 months, starting from the transfer of risk in accordance with Section 6. This does not apply to items that are used in accordance with their usual use for structures; in this case, the statutory limitation period of five years applies.
82. The supplier warrants that the delivery item is free from deficiency in title or material defects upon delivery to us or our customers. The supplier observes the relevant regulations relevant to the product’s characteristics (e.g. accident prevention regulations, VDE regulations, DIN standards, VDI guidelines, product safety law, environmental laws, and EU regulations) in their current version.
83. For the duty to examine goods and make a complaint regarding a defect immediately on receipt of the goods, the statutory provisions shall apply with the following proviso: Our duty to examine is limited to defects that become apparent during our external inspection of incoming goods including the delivery documents (e.g., transport damage, incorrect delivery or incomplete delivery) or that can be identified during our quality control using a sampling procedure. Insofar as acceptance has been agreed, there is no duty to examine. Moreover, such duty to investigate depends on the extent to which doing so is feasible within the regular course of business operations while taking into account the circumstances of the individual case. Our duty to make a complaint regarding a defect immediately on receipt of the goods concerning defects discovered later remains unaffected.

84. We are fully entitled to legal claims based on defects; in any case, we are entitled to demand from the supplier, at our discretion, repair of defects or delivery of a new item. To the extent the supplier has assumed any guarantee, the rights under the guarantee are in addition to statutory claims based on defects.
85. After the unsuccessful expiry of a reasonable grace period or – if it is no longer possible to specify a grace period because of the urgency of the situation – after informing the supplier, we are entitled to remedy the defect ourselves at the supplier's expense, have work carried out by third parties or otherwise obtain a replacement.
86. The supplier shall bear all expenses for the purpose of repair or replacement at the respective place of use of the goods. We will inform the supplier of the place of use on request.
87. If the goods are a technical object intended for prolonged use, the supplier is obliged to ensure the supply of spare parts for the normal service life of the goods, irrespective of the duration of the limitation periods.
88. In the event that the supplier carries out work in our factory or in one of our customers' plants (e.g., assembly, rectification of defects, maintenance, inspections or repair), the supplier is obliged to comply with the respective safety and procedural regulations applicable to external companies.
- 9. Product liability, conflict minerals, RoHS & REACH**
91. To cover the general liability risk, the supplier is obliged to take out liability insurance with coverage of –5 million and to prove the existence of the coverage to us.
92. If a claim is made against us on the basis of product liability, the supplier shall indemnify us against such claims upon first request, if and insofar as the damage was caused by a defect in the subject matter of the contract delivered by the supplier. In cases of liability based on fault, however, this only applies if the supplier is at fault.
93. In this context, the supplier is also obliged to reimburse any expenses that may be incurred in connection with any recall campaign carried out by us. We will inform the supplier as far as possible and reasonable about the content and extent of the recall measures to be carried out and give him the opportunity to comment.
94. The supplier undertakes to identify the use of "conflict minerals" (tin, gold, tantalum, tungsten) in its supply chain and to take appropriate measures to ensure that materials and components supplied to us do not contain conflict minerals as specified in Section 1502 of the US Dodd-Frank Act.
95. The supplier undertakes to comply with European Union directives: 2002/95/EC (RoHS), or its successors, 2011/65/EU (RoHS II) and Regulation (EC) No 1907/2006 (REACH).
- 10. Industrial property rights**
101. The supplier warrants that the use of the goods delivered does not violate any industrial property rights, in particular patents or utility models. The supplier must indemnify us in this respect against any claims made by third parties.
102. The supplier is liable for any direct or indirect damage arising from a violation of such rights. This does not apply if the supplier manufactures goods exclusively according to our drawings and/or models.
- 11. Tools, production equipment and retention of title**
- 11.1. Tools or other production materials manufactured on our behalf and paid for by us become our property upon full payment.
- The transfer of ownership is replaced by the fact that the supplier stores the items for us free of charge with the diligence of a prudent businessman. The supplier shall store the objects in our ownership separately.
- 11.2. When awarding work contracts and/or service contracts of any kind (for example research and development contracts), we are exclusively and fully entitled to the results of the work and the resulting intangibles. We have the sole right to decide whether to register industrial property rights. Should copyrights arise, the supplier grants us exclusive right of use of the work without any limitation of time and space.
- 11.3. Products manufactured according to documents designed by us or according to our confidential information or with our tools may neither be used by the supplier nor made accessible to third parties.
- 11.4. Materials provided by us remain our property. Such materials must be clearly and separately stored as our property, adequately insured against fire, water, theft and catastrophic risks at the expense of the supplier and used only as intended.
- 11.5. Processing or transformation by the supplier is carried out on our behalf. In the case of modification or merging, we acquire co-ownership of the new item in proportion to the value of our item (purchase price plus VAT) in relation to the other items modified or merged at the time of modification or merging. The supplier shall store the co-owned property safely for us.
- 11.6. Insofar as our security rights according to Sections 11.4 and 11.5 exceed the purchase price plus VAT of all reserved goods not yet paid for by more than 10%, we are obliged to abandon the security rights of our choice when requested to by the supplier.
- 12. Confidentiality, return of documents, objects**
121. The supplier undertakes to keep all information from the cooperation strictly confidential, unless it is generally known, was legally acquired by third parties or was independently developed by third parties, and to use it exclusively for the purposes of the agreement. The protected information includes in particular technical data, quantity, and prices, as well as information about products and product developments, current and future research and development projects.
122. The inclusion of our company in a reference list or the use of our order for advertising purposes is permitted only with prior written consent.
123. Documents and objects of all kinds, such as samples, drawings, tools, models and the like, which we have made available to the supplier must be sent back to us within 14 working days after completion of the cooperation or after completion of the project.
- 13. Final provisions**
131. Unless otherwise agreed, place of performance for all deliveries and services is D-77716 Haslach.
132. If the supplier is a merchant within the meaning of the German Commercial Code, our registered office in D-77716 Haslach is the place of jurisdiction. However, we are also entitled to sue at the supplier's business location.
133. The legal relations between the contractual parties are subject to the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

Haslach, June 2018

FOBOHA (Germany) GmbH