

Fenecon GmbH's general terms of delivery and payment  
(Version: January 2018)

### **I. General information / scope**

1. These terms of delivery and payment apply to all legal transactions, including those made in the future between Fenecon GmbH and the Contractor.
2. The Contractor's conditions that conflict or differ from these terms of delivery and payment or supplement them are only valid if they are expressly recognised by us in writing.

### **II. Conclusion of the contract; self-procurement requirement; force majeure; payment terms**

1. All our offers are non-binding and subject to confirmation. The sale is subject to correct and timely self-procurement.
2. The seller is entitled to cancel the contract if he does not receive the delivery item in spite of prior conclusion of a relevant purchase agreement; the seller's responsibility for intent or negligence remains unaffected. The seller will inform the buyer immediately about the non-timely availability of the delivery item and exercise the right of cancellation immediately if he prefers to do so; the seller will immediately refund the corresponding consideration to the buyer in the event of cancellation.
3. If we are prevented by events of force majeure from making a delivery on time, we shall be entitled to postpone the delivery for the duration of the hindrance or we shall be exempted from the delivery obligation, unless the buyer is still interested in the delivery. Events of force majeure include, but are not limited to: internal labour disputes for which we are not responsible, external labour disputes if we cannot reasonably obtain a replacement for the goods at risk, war, import and export bans, shortage of energy and raw materials, power failure, extreme weather conditions (e.g. hail or storm damage) or official measures.
4. Unless agreed otherwise, the remuneration is due in full upon delivery or acceptance of the goods. Unless having made the payment, the buyer will be in arrears 14 days after the due date, without further explanation by the seller.
5. Offsetting against our purchase price claims is only permitted with undisputed, decision-facilitating or legally established counterclaims. The buyer can also assert a right of retention only under these conditions.

### **III. Transferred documents**

1. We reserve ownership and copyrights to all documents, for example, calculations, drawings, etc. received by the purchaser when placing the order. These documents may not be made accessible to third parties, unless we give the purchaser our express written consent.
2. These documents must be returned to us immediately if the contract is not concluded.

### **IV. Transfer of risk upon shipment**

If the goods are despatched to the purchaser at his request, the risk of accidental loss or deterioration of the goods shall pass to the purchaser upon despatch to the purchaser, at the latest ex warehouse. This applies regardless of whether the goods are despatched from the place of performance or who bears the freight costs.

### **V. Reservation of proprietary rights**

1. The deliveries of Fenecon GmbH are subject to the right of ownership. The delivered goods shall remain the property of Fenecon GmbH until full payment of all current and future claims arising from the business relationship between Fenecon GmbH and the Client.

2. The purchaser is obliged to handle the purchased goods with care, as long as the property has not been transferred to him. In particular, he is obliged to adequately insure them at his own expense against theft, fire and water damage at replacement value.

Any maintenance and inspection work required must be carried out promptly by the purchaser at his own expense. As long as the ownership has not yet been transferred, the purchaser must notify us immediately in writing if the delivered item is seized or subjected to other interventions by third parties. Insofar as the third party is unable to reimburse us the court and out-of-court costs of a claim pursuant to Section 771 ZPO (Code of Civil Procedure), the purchaser is liable for the loss incurred by us. During the existence of the retention of ownership, the Client is prohibited from pledging or assigning it by way of security.

3. The Client is permitted to process the delivered goods, as well as to mix or connect them with other objects. This shall exclusively be done for Fenecon GmbH. Insofar as this leads to loss in ownership of the goods, the Client hereby assigns co-ownership of the new object to the Contractor in the ratio of the invoice value of the delivered goods to the invoice value of the remaining goods to secure the claims arising from the reservation of ownership.

4. Furthermore, the Client is entitled to resell the delivered goods within the framework of proper business operations. This authorisation may be revoked if the Client does not properly fulfil his contractual obligations. The Client hereby assigns his claim from the resale of the reserved goods against the purchaser, including all ancillary rights, as security to Fenecon GmbH, without any further special explanations being required. However, the assignment shall only apply to the amount corresponding to the price of the delivery item, invoiced by the Contractor.

5. Until further notice, the Client is authorised to collect the assigned claims. The Client will immediately forward payments made to the assigned claims up to the amount of the secured claim to the Contractor. In the event of good cause, in particular default or suspension of payment, opening of insolvency proceedings or threatening insolvency of the Client, the Contractor is entitled to revoke the authority to collect.

6. Fenecon GmbH undertakes to release the securities to which it is entitled upon request by the purchaser, insofar as their value exceeds the claims to be secured by more than 20%.

7. In the event of breaches of duty by the Client, in particular default of payment, the Contractor is entitled, even without setting a deadline, to demand the return of the delivery item or the new product and/or to cancel the contract; the Client is obliged to return the same.

### **VI. Notification of defect**

1. Any notification of defect must always be made immediately in writing, precisely stating the complaint to be recognised as such.

2. If the buyer has accepted the goods after inspection, any notification of defect - with the exception of hidden defects - is excluded.

3. Claims for defects do not exist with insignificant deviation from the agreed quality or with insignificant impairment of usability, natural wear or tear as well as damage, caused after the transfer of risk by faulty or negligent handling, excessive load, unsuitable operating equipment, defective construction work, unsuitable ground or special external influences that are

not specified in the contract. If the purchaser or a third party carries out improper repairs or changes, claims for defects cannot be asserted for these and the resulting consequences.

#### **VII. Supplementary performance**

1. In any case, the Contractor is entitled to choose between defect removal and new delivery (new service). The Contractor must always be given the opportunity for supplementary performance within a reasonable period of time. If the supplementary performance fails, the Client is entitled - without prejudice to any claims for damages - to reduce the price or cancel the contract. Application of Section 478 I BGB (German Civil Code) remains unaffected.
2. If the Client wants to claim damages instead of the performance or to perform on his own, then the rework is considered failed only after the second unsuccessful attempt. The legal cases of dispensability of the deadline specification remain unaffected.
3. Claims of the purchaser for the expenses incurred by supplementary performance, in particular transport, travel, labour and material costs, are excluded insofar as the expenses increase, because the goods delivered by us are subsequently moved to a location other than the purchaser's branch, unless the shipment complies with its intended use.

#### **VIII. Limitation of the Contractor's liability**

1. The Contractor is liable in cases of intent or gross negligence of the Contractor or a representative or vicarious agent thereof as well as culpably caused injury to life, limb or health in accordance with statutory provisions. However, in cases of gross negligence, the liability of the Contractor shall be limited to the foreseeable damage typical to the contract, unless any exceptional case other than that listed in p. 1 or 3 of this paragraph is present at the same time. Incidentally, the Contractor shall only be liable pursuant to the Product Liability Act, the culpable breach of essential contractual obligations or insofar as the seller has fraudulently concealed the defect or has assumed a guarantee for the quality of the delivery item. However, the claim for damages for the breach of essential contractual obligations is limited to the foreseeable damage typical to the contract, unless any exceptional case other than that listed in p. 1 or 2 of this paragraph is present at the same time.
2. The provisions of the above paragraph 1 apply to all claims for damages (in particular for damages in addition to performance and damages in lieu of performance), for whatever legal reason, in particular due to defects, breach of duties under the obligation or tort. They also apply to the claim for compensation for wasted expenditure. The liability for default, however, is determined according to Section IX, while the liability for inability to perform according to Section X.
3. Any change to the burden of proof to the detriment of the Client is not associated with the above regulation.

#### **IX. Limitation of liability due to delay in delivery**

1. The Contractor is liable for delay of performance in cases of culpable intent or gross negligence or his representative or vicarious agent as well as culpably caused injury to life, limb or health in accordance with statutory provisions. In cases of gross negligence, however, the liability of the Contractor is limited to the foreseeable damage typical to the contract. Outside of the cases of paragraphs 1 and 2, the Contractor's liability for damages due to default shall be limited to a total of 5% for damages in addition to performance and to a total of 10% of the value of the delivery/service for damages in lieu of performance (including reimbursement of wasted expenditure). Further claims of the Client are excluded - even after expiry of

the deadline for performance by the Contractor.

The restriction does not apply to culpable violation of essential contractual obligations. However, the claim for damages for the culpable breach of essential contractual obligations is limited to the foreseeable damage typical to the contract, unless another case according to p. 1 is also present at the same time. The right of the Client to cancel the contract remains unaffected.

2. Any change to the burden of proof to the detriment of the Client is not associated with the above regulations.

#### **X. Limitation of liability in case of inability to deliver**

1. The Contractor is liable for any inability to deliver goods/services in cases of intent or gross negligence of the Contractor or a representative or vicarious agent thereof, as well as culpably caused injury to life, limb or health in accordance with statutory provisions. In cases of gross negligence, however, the liability of the Contractor is limited to the foreseeable damage typical to the contract, unless any exceptional case other than that specified in paragraph 1 is present at the same time. Outside of the cases of paragraphs 1 and 2, the Contractor's liability for damages due to inability to perform and for reimbursement of wasted expenditure shall be limited to a total of 10% of the value of the delivery/service. Further claims of the Client due to inability to deliver are excluded - even after expiry of the deadline for performance by the Contractor. The right of the Client to cancel the contract remains unaffected. Any change to the burden of proof to the detriment of the Client is not associated with the above regulations.

#### **VIII. Cancellation**

The Client may cancel the contract within the scope of the statutory provisions only if the Contractor is responsible for the breach of duty. In the case of breaches of duty, the Client has to declare within a reasonable period of time after the request by the Contractor whether he will cancel the contract due to the breach of duty or insist on the delivery. In case of defects, the statutory provisions apply to cancellation of the contract.

#### **IX. Statutory limitation**

1. Claims for defects shall be statute-barred twelve months after delivery of the goods by us to our customer. The statutory limitation period applies to claims for damages in case of intent and gross negligence as well as injury to life, body and health, which are based on an intentional or negligent breach of duty by the user. These deadlines apply if the law pursuant to Section 438 subsection 1 no. 2 BGB (buildings and materials for buildings), Section 479 subsection 1 BGB (recourse claim) and Section 634a subsection 1 BGB (construction defects) specifies mandatory longer deadlines. Our consent must be obtained before returning the goods.
2. The statutory limitation period begins with the delivery for all claims, the acceptance for deliverables. The statutory limitation periods according to para. 1 also apply to all claims for damages against the Contractor that are related to the defect - irrespective of the legal basis of the claim. The statute of limitation of paragraph 1 clause 1 applies to claims for damages of any kind against the contractor that are not related to the defect.
3. The limitation periods according to paragraphs 1 and 2 apply with the following proviso:
  - The limitation periods shall generally not apply in the case of intent or fraudulent concealment of a defect or insofar as the seller has assumed a guarantee for the quality of the delivery item.

- In addition, the limitation periods for claims for damages do not apply in cases of injury to life, limb or health or of exemption, for claims under the Product Liability Act, for a grossly negligent breach of duty or for breach of essential contractual obligations.
5. Unless expressly specified otherwise, the statutory provisions on the commencement of the limitation period, the suspension of expiry, the suspension and the new start of periods remain unaffected.
  6. Any change to the burden of proof to the detriment of the Client is not associated with the above regulations.

#### **X. Damages**

1. If the delivery of the shipment is delayed at the request of the buyer for more than two weeks after the agreed delivery date or, if no exact delivery date was agreed, after the seller's notification of readiness for delivery, the seller may charge a flat storage fee amounting to 1% of the price of the delivery item, but not more than 10%, each month (possibly pro rata temporis). The buyer is allowed to prove that the seller did not incur any damage or incurred only significantly lower damage. The seller is allowed to prove that a higher damage has occurred.
2. In the event of non-fulfilment of the contract by the Client, the Contractor is entitled to claim 20% of the purchase price as damages. The buyer is allowed to prove that the seller did not incur any damage or incurred only significantly lower damage. The seller is allowed to prove that a higher damage has occurred.
3. In the case of late payment, the Contractor is entitled to demand default interest in the amount of 9 percentage points above the base rate (Section 247 BGB). The Client is allowed to prove that the seller did not incur any damage or incurred only significantly lower damage. The Contractor is allowed to prove that higher damage has occurred.

#### **XII. Place of performance; venue**

1. The place of performance for both parties is the registered office of Fenecon GmbH.
2. If the customer is a merchant, a legal entity under public law or a public special fund, the place of jurisdiction for all disputes arising from the contractual relationship, also for bill of exchange and cheque claims, is the registered office of Fenecon GmbH.
3. This contract and the legal relationship between Fenecon GmbH and the contracting party are governed by the laws of the Federal Republic of Germany, excluding the provisions of international private law (conflict of laws) and the UN Convention on Contracts for the International Sale of Goods.

#### **XII. Final provisions**

The invalidity of individual provisions of these terms of delivery and payment shall not affect the validity of the remaining provisions of these terms of delivery and payment. The parties are obliged to replace an ineffective provision with a provision that achieves the purpose intended by the invalid provision in a legally permissible manner, or comes as close as possible to this provision.