

General Conditions of Sales

1. General scope of application

(1) All deliveries, services and offers of FUJI BRANDENBURG GmbH (hereinafter referred to as "Seller") shall be made exclusively on the basis of these General Terms and Conditions of Sale. These shall form an integral part of all contracts concluded by the Seller with its contractual partners (hereinafter also referred to as "Buyer") for the deliveries or services offered by the Seller. They shall also apply to all future deliveries, services or offers to the Buyer, even if they are not separately agreed again.

(2) Terms and conditions of the Buyer or third parties shall not apply, even if the Seller does not separately object to their application in individual cases. Even if the Seller refers to a letter containing or referring to the terms and conditions of the Buyer or a third party, this shall not constitute an agreement to the validity of those terms and conditions.

(3) These General Terms and Conditions of Sale shall only apply to entrepreneurs within the meaning of Section 310 (1) of the German Civil Code (BGB).

2. Conclusion of the contract

The contract of sale shall be concluded as soon as the Seller and the Buyer have reached an agreement on the subject matter and the price, such agreement being either in writing or orally followed by a written confirmation by the Seller. In the event of any inconsistency between the Seller's confirmation and any Buyer's confirmation, the wording of the Seller's confirmation shall prevail over the wording of the Buyer's confirmation. If the Contract provides for several successive deliveries, each partial delivery shall be deemed to be a separate Contract.

3. Delivery

(1) Unless otherwise agreed in writing, delivery shall be made "ex works" or "ex warehouse" in accordance with the provisions of the latest edition of INCOTERMS issued by the International Chamber of Commerce and in force at the time of conclusion of the contract.

(2) Deadlines and dates for deliveries and services promised by the Seller shall always be approximate only, unless a fixed deadline or date has been expressly promised or agreed. If shipment has been agreed, delivery periods and delivery dates shall refer to the time of handover to the forwarder, carrier or other third party entrusted with the transport, unless expressly stated otherwise by the Seller.

(3) The Seller may - without prejudice to its rights arising from default of the Buyer - demand from the Buyer an extension of delivery and performance periods or a postponement of delivery and performance dates by the period of time during which the Buyer fails to meet its contractual obligations towards the Seller.

4. Transfer of risk

Risk in the Goods shall pass to Buyer at the time of delivery in accordance with the provisions of the applicable INCOTERMS or any written agreement to the contrary. If no agreement on delivery has been made between the parties, the risk shall be deemed to pass to the Buyer at the time the goods have left the Seller's works or warehouse.

5 Retention of title

(1) The Seller shall retain title to the purchased goods until all payments under the purchase contract have been received. In the event of conduct by the Buyer in breach of the contract, in particular in the event of default in payment, the Seller shall be entitled to take back the object of sale. The taking back of the purchased item by the Seller shall constitute a withdrawal from the contract. After taking back the object of sale, the Seller shall be entitled to realize it; the proceeds of realization shall be credited against the Buyer's liabilities - less reasonable costs of realization.

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(2) The Buyer shall be obliged to treat the object of sale with care; in particular, he shall be obliged to insure it adequately at his own expense against damage by fire, water and theft at its replacement value. Insofar as maintenance and inspection work is required, the Purchaser must carry this out in good time at its own expense.

(3) In the event of seizures or other interventions by third parties, the Buyer shall notify the Seller in writing without undue delay so that the Seller can bring an action pursuant to § 771 ZPO (German Code of Civil Procedure). Insofar as the third party is not in a position to reimburse the Seller for the judicial or extrajudicial costs of an action pursuant to § 771 ZPO, the Buyer shall be liable for the loss incurred by the Seller.

(4) The Buyer shall be entitled to resell the object of sale in the ordinary course of business; however, he hereby assigns to the Seller all claims in the amount of the final invoice amount (including VAT) of the Seller's claim accruing to him from the resale against his customers or third parties, irrespective of whether the object of sale has been resold without or after processing. The Buyer shall remain authorized to collect this claim even after the assignment. The Seller's authority to collect the claim itself shall remain unaffected. However, the Seller undertakes not to collect the claim as long as the Customer meets its payment obligations from the proceeds collected, is not in default of payment and, in particular, has not filed for insolvency proceedings or suspended payments. However, if this is the case, the Seller may demand that the Buyer informs the Seller of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

(5) The processing or transformation of the object of sale by the Buyer shall always be carried out for the Seller. If the purchased item is processed with other items not belonging to the Seller, the Seller shall acquire co-ownership of the new item in the ratio of the value of the purchased item (final invoice amount, including VAT) to the other processed items at the time of processing. In all other respects, the same shall apply to the object created by processing as to the object of sale delivered subject to reservation of title.

(6) If the object of sale is inseparably mixed with other objects not belonging to the Seller, the Seller shall acquire co-ownership of the new object in the ratio of the value of the object of sale (final invoice amount, including value added tax) to the other mixed objects at the time of mixing. If the mixing takes place in such a way that the Buyer's item is to be regarded as the main item, it shall be deemed to be agreed that the Buyer transfers co-ownership to the Seller on a pro rata basis. The Buyer shall hold the sole ownership or co-ownership thus created in safe custody for the Seller.

(7) The Buyer shall also assign to the Seller the claims to secure the Seller's claims against the Buyer which arise against a third party as a result of the connection of the object of sale with a plot of land.

(8) The Seller undertakes to release the securities to which it is entitled at the Buyer's request to the extent that the realizable value of the securities of the Seller exceeds the claims to be secured by more than 10%; the choice of the security to be released shall be incumbent on the Seller.

6. Warranty, material defects

(1) The warranty period shall be one year from delivery or, if acceptance is required, from acceptance. This period shall not apply to claims for damages of the Purchaser arising from injury to life, body or health or from intentional or grossly negligent breaches of duty by the Seller or its vicarious agents, which shall in each case be time-barred in accordance with the statutory provisions.

(2) In the event of material defects of the delivered items, the Seller shall first be obliged and entitled to rectify the defect or to make a replacement delivery at its discretion within a reasonable period of time. In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the rectification or replacement delivery, the Buyer may withdraw from the contract or reduce the purchase price appropriately.

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(4) If a defect is due to the Seller's fault, the Buyer may claim damages under the conditions set out in Clause 7.

(5) In the event of defects in components of other manufacturers which the Seller cannot remedy for licensing or factual reasons, the Seller shall, at its option, assert its warranty claims against the manufacturers and suppliers for the account of the Buyer or assign them to the Buyer. Warranty claims against the Seller shall only exist in the event of such defects under the other conditions and in accordance with these General Terms and Conditions of Sale if legal enforcement of the aforementioned claims against the manufacturer and suppliers has been unsuccessful or is futile, for example due to insolvency. For the duration of the legal dispute, the limitation period for the relevant warranty claims of the Purchaser against the Seller shall be suspended.

(6) The warranty shall lapse if the Buyer modifies the delivery item or has it modified by a third party without the Seller's consent and the rectification of defects is thereby rendered impossible or unreasonably difficult. In any case, the Buyer shall bear the additional costs of remedying the defect resulting from the modification.

(7) Any delivery of used items agreed with the Buyer in individual cases shall be made to the exclusion of any warranty for material defects.

7. Liability for damages due to fault

(1) The Seller's liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and tort, shall be limited in accordance with this Clause 7, insofar as fault is involved in each case.

(2) The Seller shall not be liable in the event of simple negligence on the part of its executive bodies, legal representatives, employees or other vicarious agents, unless this involves a breach of material contractual obligations. Material contractual obligations are the obligation to deliver and install the delivery item in due time, its freedom from defects of title as well as such material defects that impair its functionality or usability more than insignificantly, as well as consulting, protection and care obligations that are intended to enable the Buyer to use the delivery item in accordance with the contract or are intended to protect the life and limb of the Buyer's personnel or to protect the Buyer's property from significant damage.

(3) Insofar as the Seller is liable on the merits for damages pursuant to Section 7 (2), this liability shall be limited to damages which the Seller foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which it should have foreseen by exercising due care. Indirect damage and consequential damage resulting from defects in the delivery item shall also only be compensable insofar as such damage is typically to be expected when the delivery item is used for its intended purpose. The above provisions of this Paragraph 3 shall not apply in the event of intentional or grossly negligent conduct on the part of members of the governing bodies or executive employees of the Seller.

(4) In the event of liability for simple negligence, the Seller's obligation to pay compensation for damage to property and further financial losses resulting therefrom shall be limited to an amount of EUR 1,000,000 per case of damage, even if a breach of material contractual obligations is involved.

(5) The above exclusions and limitations of liability shall apply to the same extent in favor of the organs, legal representatives, employees and other vicarious agents of the Seller.

(6) Insofar as the Seller provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of performance owed by it, this shall be done free of charge and to the exclusion of any liability.

(7) The limitations of this clause 7 shall not apply to the Seller's liability for intentional conduct, for guaranteed characteristics, for injury to life, limb or health or under the Product Liability Act.

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8. Weighing

The Seller is obliged to weigh the goods on the calibrated scales located at its factories or warehouses at the latest at the moment of their departure. The Buyer shall be entitled to witness and/or verify the weighing of the goods. If Buyer has failed to designate a person to attend or verify the weighing, the weight determined by Seller at the time of shipment shall be binding. If the check weighing performed by Buyer deviates by more or less than 0.5% from the weighing performed by Seller, the parties shall perform a counter weighing, either on Seller's calibrated scales or on a measuring station to be determined by the parties. The results of this weighing shall be binding for both parties.

9. Quantity

The Seller is entitled to deliver up to 5% more or less than the quantity agreed between the parties. The difference between the delivered quantity and the agreed quantity shall be charged against the contract price. The normal loss of weight resulting from unloading of bulk material shall be borne by the Buyer.

10. Analysis

If requested by Buyer, Seller shall take at least four (4) sealed samples or specimens upon leaving its factories or warehouse, of which it shall furnish Buyer with two (2). Buyer may, at its own expense, have an analysis performed by a legally recognized laboratory within five (5) business days from the date of sampling. Buyer shall notify Seller of the results of the analysis within five (5) business days of the analysis. Seller shall have the right to have a counter-analysis performed, again by a legally recognized laboratory, at its own expense within five (5) working days after receipt of the results. If the results of the analyses differ, the average of the two (2) analyses performed by legally recognized laboratories shall be binding on both parties.

11. Acceptance of weight and quality

The quality and weight of the goods delivered shall be accepted by the Buyer at the moment the goods leave the Seller's factories or warehouse, unless otherwise agreed in writing. The Seller's standard product specifications are valid and binding, unless otherwise agreed. The Seller shall transmit them upon the Buyer's request.

12. Personalized packaging

Unless otherwise agreed, the costs of personalized packaging (including labels) designed and procured by the Seller at the Buyer's request shall always be borne by the Buyer. In the event of termination of this Agreement, the Buyer shall be obliged to purchase the ordered quantity of personalized packaging (including labels) at its own expense, otherwise the Seller shall be entitled to charge the Buyer the full cost price thereof, without prejudice to the Seller's right to claim damages provided for by law.

13. Payment

13.1 All invoices of the Seller shall be payable on the due date in accordance with the payment terms specified by the Seller and in the agreed currency of payment. In the event of non-payment on the due date, all outstanding amounts of Seller shall become immediately recoverable, even if not yet due or arising from other contracts, and Buyer shall be liable to pay interest from the due date of the invoice, without prejudice to Seller's right to claim damages as provided by law.

Non-payment also gives the Seller the right, without judicial intervention and without any other formality:

- suspend all outstanding deliveries and/or require advance payment for each delivery; and/or
- consider all or several contracts concluded with the Buyer as automatically terminated at the Buyer's expense, without prejudice to the Buyer's right to damages provided for by law.

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13.2 The Seller shall always have the right to require security, e.g. in the form of a bank guarantee issued by a bank recognized in writing by the Seller, as well as the right to require advance payment for justified reasons.

14. Prices

All prices are exclusive of value added tax, unless otherwise agreed.

15. Customs duties, levies and taxes

All increases or new levies of customs duties, charges and taxes which may affect the goods sold or the raw materials required for production between the date of conclusion of the purchase contract and the date of delivery shall be borne by the Buyer; all reductions or abolitions of the same duties, charges and taxes during the period concerned shall be for the benefit of the Buyer.

16. Pallets

Unless the pallets are included in the cost price (lost pallets), the pallets used in the delivery of goods and delivered to the Buyer shall remain the property of the Seller. Such pallets or pallets of equivalent quality and type must be returned by the Buyer at its own expense and at no cost to the Seller within a maximum of 60 days after delivery. If the Buyer fails to do so, the Seller shall be entitled to charge the Buyer for the cost of the non-returned pallets at cost price increased by 25%.

17. Force majeure

The Seller shall be entitled to invoke force majeure if the Agreement cannot be performed in whole or in part, even temporarily, as a result of circumstances or events not attributable to the Seller's fault or will, such as. (this list is not exhaustive) war, strikes, lockouts, natural disasters, epidemics, fire, explosion, measures or decrees of governmental or supranational agencies, untimely or defective performance by a third party of its obligations to Seller, and any unforeseen circumstances of whatever nature which prevent the furnishing of raw materials, supplies or semi-finished products or their manufacture or shipment. Seller shall notify Buyer as soon as possible of the existence and expected duration of the circumstances of force majeure. In the event of force majeure, performance of the Contract shall be suspended for a period equal to the duration of the force majeure, but not to exceed 60 days. After the expiration of the 60 days, either party may, upon written notice to the other party, consider the contract dissolved without judicial intervention and without any compensation. If, as a result of force majeure, the goods are destroyed in whole or in part prior to the time of delivery, the contract shall be deemed automatically dissolved up to the amount destroyed, unless otherwise agreed in writing.

18. Secrecy

The Buyer shall be obliged to maintain secrecy about everything that becomes known to him in the course of the performance of the Agreement with regard to the Seller's company and/or the Goods (this obligation shall be understood in the broadest sense) and to impose this obligation also on his employees and/or third parties whom he uses in the performance of the Agreement.

19. Final provisions

(1) If the Buyer is a merchant, a legal entity under public law or a special fund under public law or if he has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any disputes arising from the business relationship between the Seller and the Buyer shall be, at the Seller's option, Berlin or the Buyer's registered office. However, in such cases Berlin shall be the exclusive place of jurisdiction for actions against the Seller. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.

(2) The relations between the Seller and the Buyer 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 11.4.1980 (CISG) shall not apply.

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(3) Insofar as the contract or these General Terms and Conditions of Sale contain loopholes, those legally effective provisions shall be deemed to have been agreed to fill these loopholes which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions of Sale if they had been aware of the loophole.

(4) The General Conditions of Sales are available in a German-language version and in an English-language version. In the event of any discrepancies or ambiguities, the German version shall take precedence over the English version.