



**General Conditions of Purchase by Klaus Faber AG,**

**Lebacher Str. 152-156, 66113 Saarbrücken, Germany**

Applicable in business transactions with companies, legal entities under public law and special funds under public law

**1. Scope of application**

- 1.1 These General Conditions of Purchase are an integral part of the orders placed by Klaus Faber AG ("*Faber*") with the Supplier.
- 1.2 These General Conditions of Purchase shall be integrated into the contents of the contract concluded with the Supplier. In the event that the Supplier has recognised them, after they have been submitted to him, they shall be also applicable to future contracts with him.
- 1.3 *Faber* contradicts any general terms of business of the Supplier. They shall become an integral part of the contracts with *Faber* only if and to the extent that *Faber* recognises them expressly and in writing.
- 1.4 When taking receipt and/or accepting deliveries, this does not constitute acceptance of the general terms of business of the Supplier, even if *Faber* does not expressly contradict any reference made by the Supplier to such terms.

**2. Offers, conclusion of contract**

- 2.1 Offers made for *Faber* are free of charge and do not oblige *Faber* to place an order.
- 2.2 The order, any modifications of or amendments to it, as well as other agreements made in connection with the conclusion of the contract will be placed and/or confirmed in writing by *Faber*.
- 2.3 The order, specifying the same content, has to be confirmed by the Supplier in writing.
- 2.4 Acceptance of an order by the Supplier shall include a reference to the order and the other order details.



### **3. Drawings, documents, own supplies**

- 3.1** Any drawings, documents, models and other own supplies provided by *Faber* shall remain the property of *Faber*.
- 3.2** The Supplier is not entitled to pass on drawings, documents, models and other own supplies passed on to him by *Faber*, unless he has obtained *Faber*'s prior written consent.
- 3.3** When the contractual relationship with the Supplier has ended, the Supplier shall, if so requested, return to *Faber* without undue delay any drawings, documents, models or other own supplies previously passed on by *Faber*.

### **4. Deadlines, time limits**

- 4.1** The Supplier is obliged to adhere to agreed deadlines and time limits. This shall be the case if and when non-defective goods arrive at the place of destination. In the event that a declaration of acceptance by *Faber* has been agreed or is provided for by law, such declaration shall prevail.
- 4.2** Premature deliveries shall require *Faber*'s consent.
- 4.3** In the event that the Supplier realises that he cannot adhere to agreed deadlines and time limits, he shall notify *Faber* without undue delay and communicate to them the reasons for and the expected duration of the delay. This shall in no way affect the statutory rights and claims of *Faber*.

### **5. Partial deliveries, excess deliveries, default, contract penalty**

- 5.1** Partial deliveries shall require *Faber*'s prior consent. Any additional costs for transport shall then be borne by the Supplier.
- 5.2** *Faber* reserves the right to agree to quantity deviations of deliveries in exceptional cases. In the event that an excess delivery is made without the prior consent of *Faber*, *Faber* may refuse acceptance of the delivery or demand from the Supplier to pick up the excess amount.
- 5.3** If the date on which the delivery and/or performance have to be provided can be determined on the basis of the contract, the Supplier will be in default as of the expiry of such day, and no reminder by *Faber* will be necessary to this effect. In the case of default, the rights of *Faber* – including without limitation cancellation or damages – shall be governed by the statutory provisions. Damages shall also include compensation for loss of profit.
- 5.4** In the event of default *Faber* shall be entitled to demand payment of the contract penalty. For each week of delay commenced, it shall amount to 1% of the agreed net price, however to no more than 5%. In the event that the contract penalty is applicable, *Faber* is entitled to claim it up



until the invoice is settled. *Faber* shall be entitled to assert other and/or additional statutory claims they may have in the case of default.

## **6. Prices, terms for Delivery, transport, documentation**

**6.1** Prices and price bases agreed shall be binding.

**6.2** The Supplier shall provide for the transport at no extra cost for *Faber* regarding freight and fees to the given place of destination. Goods have to be transported in such a manner that damage in transit is avoided. To the extent that the goods have to be labelled and/or packaged in accordance with FN 0100 (on Faber website) and specific national or international transport rules, these obligations shall be incumbent on the Supplier, even if there is no specific agreement in this respect with *Faber*.

**6.3** Any transport documents (FN 0200- on Faber website) must refer to the order numbers, the designated recipients as well as the correct place of destination, as communicated to the Supplier by *Faber*.

**6.4** As a rule, deliveries are effected “DDP named place of destination, Incoterms® 2010”, unless mandatory acceptance by *Faber* is provided for by law or contract. To the extent that import VAT applies, such payment shall be incumbent on *Faber*. It is agreed that the disposal for the imported goods will be by *Faber* from the moment the goods enter the European Union.

**6.5** Place of performance for deliveries is the agreed place of destination. In the event that an order refers to more than one place of destination, the place of performance for the assigned quantities shall be the place of destination referred to in the assignment.

## **7. Invoice, payment**

**7.1** Invoices have to be submitted in a verifiable manner and in duplicate upon complete, non-defective delivery for each delivery, and must indicate the order details. Non-verifiable invoices may be returned.



**7.2** The time-limit for payment and early payment discounts shall be as agreed in the contract. The time-limit starts upon receipt of the invoice, however not before deliveries are received in a complete and non-defective manner. Payment has to be made by bank transfer. It is deemed effected if *Faber* has authorised the transfer by the last day of the time-limit.

**7.3** Place of performance for payment is the principal place of business of *Faber*.

## **8. Set-off and retention rights, assignment**

**8.1** *Faber* is entitled to rely on the statutory set-off and retention rights without limitation.

**8.2** Without *Faber*'s prior written consent, the Supplier is not entitled to assign claims he has against *Faber* or have such claims collected by a third party, unless such claims are undisputed, recognised and/or unappealable.

## **9. Transfer of Risk, inspection and complaints duty**

**9.1** The risk related to the goods passes to *Faber* when the goods have arrived at the place of destination. In the event that acceptance has been agreed or is provided for by law, the risk is to pass upon acceptance.

**9.2.** *Faber* must notify the Supplier of defects in the contractual object as soon as these are identified in the normal course of business, within 10 working days. In this respect, the Supplier shall waive any plea for late notification of defects. *Faber* obligation to examine for defects and to notify defects is limited to examination of quantitative details on the relevant delivery note and to visually discernible shipping damage upon delivery (visual defects). Any further obligation to examine for defects and to notify defects does not form part of these Conditions and the Supplier expressly waives its right to object to notification of defects carried out improperly according to § 377 German Commercial Code.

Faber payment does not represent recognition that the delivery is free from defects.

## **10. Quality and documentation**

**10.1** With respect to his deliveries, the Supplier shall comply with the recognized state of the art, safety regulations, agreed technical data and/or *Faber* standards (if so attached in an annex). In the event that an item of the delivery requires specific approval (VDE, BASEC or other) at the place



of destination, the Supplier shall be obliged to send a copy of the relevant approval to *Faber* no later than together with the delivery.

- 10.2** Modifications of the characteristic features of the goods ordered shall require *Faber's* prior written consent.
- 10.3** The Supplier shall constantly check on, and document, the quality of the goods. The Supplier undertakes to maintain a quality management system pursuant to DIN ISO 9001 and DIN ISO 14000, or comparable, throughout the business relationship with *Faber*. Proof has to be furnished upon *Faber's* request.
- 10.4** The test records have to be kept for ten years and have to be presented to *Faber* if so required. The documentation duty shall apply to all items of the delivery.
- 10.5** For quality assurance purposes, the Supplier shall provide its deliveries and performance in compliance with the provisions of public law applicable at the place of destination of the goods, including, if applicable, in compliance with Directive 2011/65/EU (RoHS) and Regulation (EC) No. 1907/2006 (REACH) in the then applicable version(s).

## **11. Characteristic features of deliveries, rights in the case of defects, limitation period**

- 11.1** The Supplier is under the obligation to provide non-defective deliveries and performance. They must comply with the current state of the art, the generally recognised safety regulations issued by government agencies and industry associations at the place of destination and must comply with applicable environmental rules, even if they have not been specified in the individual case. To the extent that certificates of origin (EUR1 or long-term supplier declaration) have to be submitted, they shall constitute an integral part of the delivery owed.
- 11.2** In the case of defects and in the event of non-compliance with guarantees granted to *Faber*, *Faber* shall be entitled to assert claims based on defects as provided for by law. To the extent that individual guarantee claims exceed statutory claims based on defect, they will not be affected by such rule.
- 11.3** In the case of defects, *Faber* shall be entitled to exercise these statutory rights without limitation. In this context, *Faber* may, at its own option, demand from the Supplier to provide a remedy (legal concept of "*Nacherfüllung*" under German law) by way of repair, replacement delivery or remanufacture as well as compensation for damage pursuant to the statutory rules. The Supplier's duty to remedy defects refers, with respect to all measures to be taken and all costs to be paid, to the place of performance of the contract.



- 11.4** In the event that no remedy has been provided within an appropriate grace period granted to the Supplier, or if the remedy was unsuccessful or if no grace period had to be granted, *Faber* may, provided that the statutory requirements apply, withdraw from the contract and claim damages, damages in lieu of performance, or compensation of futile expenditure or demand a reduction.
- 11.5** In the event that the Supplier does not comply with his remedial duties within the appropriate period granted, and provided that he does not have the right to refuse to provide a remedy, *Faber* shall be entitled to provide the remedy, or have it provided by a third party, for the account of the Supplier if the Supplier cannot be reached and there is a threat of substantial damage. Irrespective of the above, the Supplier's duty to provide a remedy does not cease to apply.
- 11.6** The limitation period of claims based on quality defects is 36 months, and in the case of a defective title 48 months, unless a longer period applies according to statute. The period starts when the delivery arrives at the place of destination, or upon acceptance, as specifically agreed or provided for by law.
- 11.7** If a replacement delivery is provided because of a defect, the limitation period shall recommence with respect to the item replaced.
- 11.8** Upon successful completion of remedial work, the limitation period shall recommence with respect to parts replaced.

## **12. Industrial property rights of third parties, ownership**

- 12.1** The Supplier shall ensure that *Faber* does not infringe on third parties' industrial property rights when they use the goods as provided for in the contract and/or resell them. He shall hold *Faber* harmless with respect to all claims based on an infringement of an industrial property right that are raised against *Faber* and shall bear the costs for the protection of the rights,

provided that the claims are attributable to his negligent breach of duties. *Faber* shall notify him without undue delay in the event of any claim asserted.

- 12.2** *Faber* refuses to accept provisions on the retention of title on the part of the Supplier exceeding the simple retention of title. Such provisions require our prior, express agreement in writing. Should, despite of the above, a situation occur where a subcontractor of the goods delivered by the Supplier asserts ownership rights, co-ownership rights or collateral rights or has enforcement measures exercised, *Faber* will claim compensation from the Supplier for any damage thus incurred.



### **13. Product Liability, other liability, insurance**

- 13.1** Liability on the part of the Supplier other than based on reasons provided for in Art. 4, 5, 10 and 11 shall be governed by the statutory provisions, as well as any case of extra-contractual product liability on the part of the Supplier.
- 13.2** The Supplier shall hold *Faber* harmless with respect to all claims based on extra-contractual product liability, to the extent that liability is based on a defect contained in the goods delivered by him, whose cause is attributable to his management and organisation sphere, and if he himself is externally liable. In the event that *Faber* is under the obligation to provide precautionary measures because there is a risk of personal injury or death, the Supplier shall be liable with respect to costs incurred by reason of such measures, provided that they are appropriate and necessary. The above in no way affects the existing right of *Faber* to claim compensation from the Supplier for own damage incurred.
- 13.3** The Supplier undertakes to provide adequate insurance cover against a liability risk resulting from contracts concluded with *Faber*. He shall prove to *Faber* upon request the cover obtained and the individual amount insured for each incident and submit a written confirmation of the insurance company.

### **14. Secrecy, data protection**

- 14.1** The Supplier shall keep confidential any information obtained in the course of the contractual cooperation with *Faber*, including without limitation information on internal matters and know-how or business projects of *Faber*, irrespective of whether such information has been obtained in the course of the cooperation or through documents accessible to him. He may make them accessible to a third party only if this is unavoidable to provide the contractual performance owed to *Faber*. This applies in particular to goods manufactured by the Supplier specifically according to instructions given by *Faber*. The Supplier shall oblige his employees involved to maintain the same level of confidentiality.
- 14.2** In compliance with the applicable statutory rules, *Faber* is entitled to store and or process any data for the purposes of the contract that is made available by the Supplier in connection with the conclusion and execution of contracts, including without limitation personal data.

### **15. Venue, applicable law**

- 15.1** The laws of the Federal Republic of Germany shall apply to the exclusion of conflict-of-law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).



- 15.2 Insofar as the Supplier is a merchant, a legal entity under public law or special fund under public law, the place of jurisdiction for all disputes arising from the contractual relationship shall be our business headquarters. We are also entitled to initiate claims at the Supplier's registered office.
- 15.3 If an individual provision of these Conditions or of the additional concluded agreements is or becomes ineffective, the validity of the remaining Conditions shall be unaffected thereby. The contractual partners undertake to replace the ineffective provision with a provision that comes as close as possible to the economic purpose of the original provision. The same applies in the event of any omissions.

