

General Terms and Conditions for the Supply of Products by A. Friedr. Flender AG - FLENDER -

I. General Data

1. These General Conditions as well as any particular covenants shall apply to all deliveries and services by FLENDER. On acceptance of an order, diverging conditions of sale on the part of the Purchaser shall not become terms of the contract.
A contract shall come into existence with FLENDER's written acknowledgement of order.
2. FLENDER reserves its title to and copyright of patterns and designs, estimates of cost, drawings, and similar information – also in electronic form; they may not be disclosed to third parties. FLENDER binds itself to disclose confidential information and documents of the Purchaser to third parties only with the consent of the Purchaser.

II. Prices and Terms of Payment

1. Prices are ex works including loading at the factory, however, packing and unloading excluded, plus VAT at the respective rate prescribed by law.
2. Payment is to be effected without any deduction on FLENDER's account as follows:
1/3 upon receipt of the acknowledgement of the order;
1/3 as soon as the Purchaser has been advised that the main parts of the Product are ready for dispatch; the remaining amount within one month from the day of the passing of the risk.
3. The Purchaser shall have the right to withhold payments or make deductions from the invoice to set off against counterclaims only in so far as his counterclaims have not been disputed or have been recognized by declaratory judgment.

III. Delivery Time, Delay in Delivery

1. The delivery time can be derived from the stipulations between the parties to the contract. Prerequisite for the adherence to the delivery schedule by FLENDER is that all commercial and technical questions have been clarified between the contracting parties and the Purchaser has fulfilled all duties incumbent on him, such as the production of necessary official certificates or permits, or making an advance payment. If that is not the case, the time of delivery shall be reasonably extended. This shall not apply in so far as FLENDER will be responsible for the delay.
2. Adherence to the delivery schedule is subject to FLENDER being supplied with goods properly and in good time.
3. The term of delivery is adhered to when the Product has left FLENDER's works before its expiry or readiness for dispatch has been advised. If an acceptance is to be carried out, the date of the acceptance shall be authoritative – save for rightful rejection – alternatively the date of advice of willingness to accept the goods.
4. If dispatch or acceptance of the Product is delayed for reasons the Purchaser is liable for, he will be charged for the costs arising from the delay, starting one month after readiness for dispatch or willingness to accept the Product has been advised.
5. The delivery time shall be reasonably extended if non-observance of the delivery time is due to circumstances amounting to force majeure or other events beyond FLENDER's control. FLENDER shall at its earliest convenience notify the Purchaser of the beginning and the end of such circumstances.
6. The Purchaser shall be entitled to withdraw from the contract without setting a time limit if FLENDER is completely unable to perform the contractual services prior to the passing of the risk. The Purchaser may also withdraw from the contract if the execution of part delivery becomes impossible and he has a legitimate interest to reject a part delivery. If that is not the case, the Purchaser shall have to pay the contract price attributable to the part delivery. The same shall apply in case of FLENDER's inability to perform. In other respects, section VII.2 shall apply.

Should the impossibility or inability of performance occur during the default of acceptance, or should the Purchaser alone or predominantly be responsible for the circumstances, he shall remain under the obligation to make counter-performance.

7. If FLENDER is behind schedule and the Purchaser suffers a loss from it he shall be entitled to claim compensation for loss occasioned by delay on a flat-rate basis. It shall amount to 0.5% for each completed week, altogether, however, it shall not exceed 5% of the value of that part of the total delivery which he due to the delay cannot use in good time or as intended.

If the Purchaser fixes a reasonable period of performance for FLENDER after the due date – taking into account statutory exceptions – and the time limit is exceeded, the Purchaser shall have the right – within the limits of statutory provisions – to rescind the contract.

Further claims arising from a delay in delivery are exclusively determined in section VII. 2 of these Terms and Conditions.

IV. Passing of the Risk, Acceptance

1. The risk shall pass to the Purchaser when the Product has left the factory, even in case of part deliveries, or where FLENDER has undertaken other obligations and services, e.g. shipping costs or delivery and installation. In so far as an acceptance has to be carried out, the date of the acceptance shall be authoritative for the passing of the risk. The test has to be carried out without delay by the date of acceptance by the Purchaser, alternatively upon FLENDER's advice of readiness for acceptance. The Purchaser may not refuse acceptance in case of an insignificant deficiency.
2. If dispatch or acceptance is delayed or not carried out due to circumstances FLENDER is not liable for, the risk shall pass to the Purchaser from the day of advice of readiness for dispatch or acceptance. FLENDER undertakes to effect insurances for the Product as requested by the Purchaser at the Purchaser's cost.
3. Part deliveries shall be permissible as far as it is reasonable for the Purchaser.

V. Reservation of Title

1. FLENDER retains title in the Product (personal property) until all accounts receivable from the business connection between FLENDER and the Purchaser inclusive of the future claims have been settled, even if individual or all receivables have been incorporated into current accounts with FLENDER, a balance has been struck and confirmed. In case the Purchaser's conduct is not in conformity with the contract, FLENDER, after having given notice, shall be entitled to take back the Product and the Purchaser shall be bound to return it. Taking back or attachment of the Product by FLENDER can be construed as a withdrawal from the contract only if FLENDER declares this in writing. The Purchaser shall not be entitled to put the Product in pledge or assign the Product by way of security without the consent of FLENDER. In the event of attachment or other actions by a third party, the Purchaser shall have to notify FLENDER without delay in writing.
2. The Purchaser shall be entitled to sell the Product in the ordinary course of business. For safety's sake, he transfers to FLENDER already now all claims amounting to the invoice value, arising from the sale against the buyer or a third party, irrespective of the Product having been sold without or subsequent to further processing. The Purchaser shall be entitled to collect these claims even after assignment. FLENDER's authority to collect the claims itself remains unaffected by this. FLENDER undertakes, however, not to collect these claims for as long as the Purchaser fulfils his liabilities to pay. FLENDER can demand, that the Purchaser gives it all details necessary for the collection of claims, that he hands over all necessary documents, and notifies the debtors of the assignment. In case the Product is resold together with other goods not belonging to FLENDER, the claim of the Purchaser against his buyer is assigned to the amount of the contract price agreed between FLENDER and the Purchaser.
3. Processing or reconstruction of the Product shall always be carried out by the Purchaser for FLENDER. If the Product becomes an integral part of other plant or machinery not belonging to FLENDER, common ownership in the new object shall be transferred to FLENDER in the ratio of value of reserved goods to the value of other processed goods at the time of processing. If objects of FLENDER are connected with other movable things to be one integrated object, and the other object is to be regarded as main thing, common ownership in the amount of the invoice value shall be transferred to FLENDER by the Purchaser in so far as the main thing belongs to him. For the plant or machinery which comes into being through processing or reconstruction, the same restrictions as for the reserved goods shall apply. The Purchaser shall hold in trust the ownership or common ownership for FLENDER. FLENDER will release securities it is entitled to in so far as

their value exceeds the debts to be secured by more than 20%, as far as they have not yet been paid.

4. FLENDER shall have the right to insure the Product at the Purchaser's cost against theft, breakage, fire, water and other damage, in so far as the Purchaser cannot prove that he has effected insurance himself.

VI. Claims of the Purchaser based on defects

FLENDER gives warranty of quality and title for the delivery excluding any further claims – save as provided in section VII – as follows:

Warranty of quality

1. FLENDER shall at its discretion repair or replace free of charge any parts which have proved defective due to circumstances originating prior to the transfer of the risk. Any such defects should without delay be brought to the notice of FLENDER in writing. Replaced parts shall become FLENDER's property.
2. In order to enable FLENDER to carry out all rectifications of defects and replacements it deems necessary, the Purchaser, after having notified FLENDER, has to provide the necessary time and opportunity; otherwise FLENDER shall be released from liability for any losses resulting from it. Only in urgent cases where industrial safety is endangered or disproportionate damage is to be avoided – of which FLENDER has to be notified without delay – the Purchaser shall have the right to remedy the defect himself, or have it remedied by a third party, or request refund of the necessary expenses from FLENDER.
3. Of the costs arising from rectifications of defects and replacements – provided the claim proves to be justified – FLENDER shall bear the costs of the spare part including shipping costs. FLENDER shall also bear the costs arising from disassembly and reassembly as well as the costs arising from sending fitters and semi-skilled personnel as necessary inclusive of travelling expenses in so far as this will not cause disproportionate expenses for FLENDER.
4. The Purchaser shall have the right – within the limits of statutory provisions – to withdraw from the contract if FLENDER – taking into account statutory exceptions – has let a reasonable period of time expire without results which was granted to FLENDER for rectification of defects or the delivery of replacement. In case of an insignificant

deficiency, the Purchaser shall only have a right to claim the reduction of the contract price. Otherwise, the right to claim the reduction of the contract price shall be excluded.

Further claims are determined in section VII. 2 of these Terms and Conditions.

5. Above all, no guarantee will be given in the following cases:

Inappropriate or improper use, incorrect assembly or putting into operation by the Purchaser or a third party, normal wear and tear, faulty or negligent treatment, faulty maintenance, unsuitable working fluids, defective construction work, unsuitable building ground, chemical, electrochemical or electrical influences – unless FLENDER is responsible for them.

6. If the Purchaser or a third party remedies defects improperly, FLENDER shall not be liable for any losses resulting from it.

The same shall apply if modifications on the Product have been made without FLENDER's prior consent.

Warranty of title

7. If the use of the Product presents an infringement of industrial property rights or copyrights in Germany, FLENDER shall, at its own expense, acquire the right of further use of the Product for the Purchaser or modify the Product in a manner reasonable for the Purchaser and ruling out the infringement of the right.

If this is impossible under economically reasonable conditions or within an adequate period of time, the Purchaser shall have the right to withdraw from the contract. Under the mentioned conditions, FLENDER shall also have the right to withdraw from the contract.

Furthermore, FLENDER shall indemnify the Purchaser against uncontested claims or claims recognized by declaratory judgment of the respective holders of property rights.

8. FLENDER's obligations stated in section VI. 7 are final, save as provided in section VII. 2 in the event of an infringement of industrial property rights or copyrights.

They exist only if

- The Purchaser immediately notifies FLENDER that an infringement of industrial property rights or copyrights has been asserted;

- The Purchaser assists FLENDER to a reasonable extent in fending off asserted claims or enables FLENDER to carry out the modifications in accordance with section VI. 7;
- All measures to fend off claims – inclusive of extrajudicial settlements – are reserved for FLENDER;
- The defect of title has not been caused by a direction of the Purchaser; and
- The infringement of the right has not been caused by the Purchaser having arbitrarily modified the Product or having used it contrary to contract.

VII. Liability

1. If through FLENDER's fault the Product cannot be used by the Purchaser as intended because FLENDER failed to execute or defectively executed suggestions made or advice given prior or subsequent to the conclusion of the contract, or due to infringement of other contractual accessory obligations – in particular operating and maintenance instructions for the Product – the regulations in sections VI and VII. 2 shall apply accordingly, to the exclusion of further claims by the Purchaser.
2. For damage not caused to the Product itself, FLENDER shall be liable only – for whatever legal reasons –
 - a) If done intentionally;
 - b) In case of gross negligence of the owner / the bodies or managing employees;
 - c) In case of negligent injury and damage;
 - d) For defects FLENDER concealed fraudulently or the absence of which was expressly warranted;
 - e) For defects of the Product, in so far as according to the Product Liability Act FLENDER is liable for personal injury or damage to items of property used privately.

In case of negligent infringement of essential contractual obligations, FLENDER shall also be liable for gross negligence of non-managing employees and for slight negligence, in the latter case limited to the typical, reasonably foreseeable damage which is intrinsic to the contract.

Further claims shall be excluded.

VIII. Limitation

All claims by the Purchaser – for whatever legal reasons – shall be subject to a 12-month limitation period. To claims for damages according to section VII. 2 a) to e), the periods prescribed by law shall apply. They shall also apply in the case of defects of a structure or for a Product which has been used for a structure in accordance with its normal purpose of use and has caused the defectiveness of it.

IX. Use of Software

In so far as software is included in the scope of supply, the Purchaser shall be granted a non-exclusive right to use the supplied software inclusive of the documentation belonging to it. It is left in the Purchaser's care for use with the Product it is intended for. Using the software on more than one system is prohibited.

The Purchaser may reproduce, revise, translate, or change the software from the object code into the source code only to the extent permitted by law (§§ 69 a ff. UrhG). The Purchaser undertakes not to remove or change information by the manufacturer – in particular copyright notices – without FLENDER's prior express approval.

Any other rights in the software and documentation inclusive of the reproductions shall remain with FLENDER or the software supplier. Granting sublicenses is not allowed.

X. Applicable Law, Jurisdiction

1. All legal relationships between FLENDER and the Purchaser shall be exclusively governed by German law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The court competent for FLENDER's head office shall have jurisdiction. FLENDER shall, however, be entitled to institute legal proceedings at the Purchaser's main place of business.