

**Purchasing Terms and Conditions of the company**  
**(March 2020)**

**Fluitronics GmbH, Europapark Fichtenhain B2, 47807 Krefeld**

(hereinafter referred to as PURCHASERS)

**§ 1 Validity of the Purchasing Terms and Conditions**

1. The following purchasing terms and conditions are valid for all legal relationships between the PURCHASER and its SUPPLIERS if the SUPPLIER is a company. Deviating provisions, in particular sales, delivery and payment conditions of the SUPPLIER shall only apply if they have been confirmed in writing by the PURCHASER.
2. With the initial delivery on the basis of these purchasing terms and conditions, the SUPPLIER also regards the terms in their currently valid version as agreed for all further contractual relationships.
3. If framework agreements have been concluded between the parties, these have priority. Unless they contain more specific regulations, such framework agreements are supplemented by these purchasing terms and conditions. Changes to the agreement, supplements or verbal ancillary agreements are only valid if they have been confirmed in writing by the PURCHASER.

**§ 2 Conclusion of the Agreement**

1. Only written purchase orders, with a signature or validity statement, are valid. The content of the purchase order is valid exclusively. The SUPPLIER must confirm the purchase order in writing within 5 days of the purchase order date. After expiry of this deadline, the PURCHASER is entitled to revoke his orders. Claims of the SUPPLIER based on valid revocations are excluded.
2. The PURCHASER is entitled to request modifications to the delivery items even after conclusion of the contract if such changes may reasonably be expected of the SUPPLIER.
3. The agreed designation of the goods (brand of the PURCHASER / article no. / series indicator / manufacturer's symbol, etc.) is mandatory and must be attached in appropriate form to the goods to be delivered and documented.
4. The SUPPLIER may only award subcontracts with the agreement of the PURCHASER.

**§ 3 Prices, Payment**

1. Agreed prices are fixed prices and include all costs for packaging, transport to the specified receiving or usage location, customs procedures and duties and, in case of doubt, the applicable value-added tax. If no prices are specified in the purchase order, the prices set by the SUPPLIER must be provided to the PURCHASER in advance for approval.
2. Invoices, showing all related data and value-added tax must be transmitted in duplicate after delivery.
3. Following the receipt of goods and the invoice, the PURCHASER shall pay within 14 days with a 3% discount, within 40 days with a 2% discount, or within 90 days net.
4. In the event of early deliveries, the due date of the invoices shall be based on the originally agreed delivery date.
5. In the event of incomplete or erroneous deliveries, the PURCHASER is entitled to retain payment in full or in part until proper fulfilment. The SUPPLIER shall only have retention or set-off rights against claims of the PURCHASER with regard to claims that have been acknowledged or legally recognized by the PURCHASER or are ready for decision.

**§ 4 Delivery Dates and Periods**

1. The agreed delivery dates and periods are binding. Compliance shall be determined by the goods receipt date of the PURCHASER.
2. The SUPPLIER is obliged to notify the PURCHASER immediately in writing if circumstances occur or become apparent which make it clear to him that the agreed delivery dates cannot be complied with.
3. If the SUPPLIER does not comply with delivery dates and periods for reasons that are within his control, the PURCHASER is entitled, without further notice of default or extension of deadlines, to withdraw from the contract and/or to claim damages.
4. Partial deliveries are only permitted if expressly agreed to in writing.
5. Retention of title has not been agreed.

**§ 5 Defaults in performance**

1. Serious events, such as force majeure, which are beyond the control of the respective contracting party and which result in unforeseeable consequences for the performance provision, shall release the contracting parties from their main performance obligations for the duration of the disturbance and to the extent of its effect, insofar as the respective contracting party is completely or predominantly prevented from fulfilling its contractual obligations without being at fault for this. Supply difficulties and other performance disruptions within the scope of the SUPPLIER's procurement shall only be deemed to be force majeure if the SUPPLIER's direct supplier is itself prevented from providing the performance incumbent upon it by an event in accordance with sentence 1 and no other supplier is able to supply. There is no obstacle to performance if the consultation of an alternative supplier is possible even with considerable efforts and higher costs. The SUPPLIER shall bear the comprehensive procurement risk in this respect.
2. The occurrence of an event according to No. 1 does not imply an automatic termination of the contract. The contracting parties are obliged to inform each other immediately of any obstacle to performance and to adjust their obligations to the changed circumstances in good faith. If the PURCHASER cannot reasonably be expected to accept a delivery that differs in terms of time, quality or quantity, he may withdraw from the contract.
3. The SUPPLIER shall be liable for penalties and damages caused by delay that are suffered by the PURCHASER as a result of an event according to No. 1 within the scope of the SUPPLIER's obligations, but which cannot be refused with reference to this.
4. If the PURCHASER is confronted with a refusal of performance according to No. 1 on the part of his customer, the PURCHASER shall also be entitled towards the SUPPLIER to suspend the further performance of the contract or - if the obstacle to acceptance will not cease to exist in the foreseeable future - to withdraw from the contract. In this case, the SUPPLIER shall not be entitled to make claims for compensation.

**§ 6 Transfer of Risk / Packaging / Insurance**

1. The delivery shall be made free of charge to the PURCHASER's address and is at the SUPPLIER's risk until the goods are delivered in full at the contractually agreed receiving or usage location.
2. The SUPPLIER shall pack the objects to be delivered in environmentally friendly packaging materials in such a way that damage during transit is avoided.
3. The SUPPLIER shall insure the delivery at his expense against loss and damages during transport and shall provide evidence of the insurance at the request of the PURCHASER.

**§ 7 Notice of Defects**

1. a) The PURCHASER shall inspect the delivered goods within a period of two weeks from delivery of the goods. If the functioning and freedom from defects of the supplied products cannot be established at acceptable cost before fitting, commissioning and/or acceptance of the finished product, inspection may also take place later in connection with one of these operations.  
b) If a special quality assurance agreement has been concluded between the SUPPLIER and the PURCHASER, the obligatory inspection is confined to damage in transit, identity and quantity checking, and a functional inspection. The same applies if the SUPPLIER is certified in accordance with ISO 9000 et seq., if he has used this certification in his marketing, and he has not made it clear to the PURCHASER in writing within a week after conclusion of the contract that this meaning should not be attached to certification.
2. Any defects discovered must be reported within two weeks.
3. The SUPPLIER waives the defence of delayed inspections and/or notices of defects if the PURCHASER has complied with its obligations under Sections 1. and 2. above.

**§ 8 Warranty / Guarantee**

1. The SUPPLIER guarantees that all delivered goods / services rendered are in accordance with the most up-to-date technology, the relevant national, European and international legal requirements, and the specifications and guidelines of public authorities, professional and trade associations. The SUPPLIER further guarantees that the supplied products and packaging materials are environmentally compatible. If the products supplied are not in accordance with the guarantee assumed, the SUPPLIER is liable for all resulting damages including any consequential damages. The PURCHASER is entitled to require the SUPPLIER to submit without charge certificates of inspection relating to the goods supplied.
2. a) The warranty period is two years from discovery of the defect by the PURCHASER. At the most, however, the warranty period is five years from the transfer of risk or, in the event of performance of work or services by the SUPPLIER, from the date of acceptance.  
b) Where supplied goods are incorporated unaltered into products of the PURCHASER, the warranty period begins on the date on which the products are commissioned by the end user. It ends at the latest, however, five years after delivery of the goods to the PURCHASER or, in the event of performance of work or services, five years after acceptance of the work by the PURCHASER.  
c) Any rights of recourse of the PURCHASER against the SUPPLIER are unaffected where warranty claims are made by a consumer against his contract partner for return of the goods or reduction of the purchase price. In this case, the special provisions governing consumer goods purchases in accordance with §§ 478 and 479 BGB (German Civil Code) apply.
3. If, during the warranty period, material defects appear in supplied goods, the SUPPLIER must effect remedy by, at the PURCHASER's choice, either repair or replacement with defect-free goods. Claims by the PURCHASER for compensation or reimbursement for wasted expenditure remain unaffected. All costs incurred for subsequent performance, replacement or repair (personnel, material, transport costs / necessary recalls, etc.) shall be borne by the SUPPLIER.
4. If the subsequent performance claim is not satisfied by the SUPPLIER within set time limits, subsequent performance is deemed to have failed and the PURCHASER is entitled, at the SUPPLIER's expense and risk, to remedy the defects himself or have it done by third parties, without the SUPPLIER's liability for material defects being affected.

**§ 9 Product Liability**

1. The SUPPLIER is obliged to compensate the PURCHASER for losses incurred because of a defect in the supplied goods. If a claim is made against the PURCHASER under the provisions of national or international product liability regulations due to a defect in the products delivered by the SUPPLIER, the SUPPLIER is obliged to indemnify the PURCHASER against all claims attributable to a defect in the delivered parts. The SUPPLIER's obligation to pay compensation covers both damage compensation payments to third parties and expenditure on legal defence, recall costs, inspection costs, assembling and dismantling costs, and other expenses of the PURCHASER related to processing the claim.
2. The SUPPLIER is obliged to take out, at his own expense, product liability insurance which includes cover - if applicable and to the extent coverable - of the recall risk, and to show the PURCHASER evidence of this insurance on request. The insurance cover provided by the product liability policy must extend at least to the whole of Europe, the USA and Canada and, with respect to scope and duration, must comply with the applicable maximum limits of liability under the German Product Liability Act.

**§ 10 Confidentiality / Models / Tools / Data Protection**

1. The SUPPLIER is obliged to treat the conclusion of the contract as confidential. All commercial and technical details and operational procedures which have come to the knowledge of the SUPPLIER through the business relationship with the PURCHASER are to be treated as business secrets unless they have become generally known. The SUPPLIER must contractually impose the same duty of confidentiality, which remains valid after the contract has ended, on his personnel, sub-suppliers and other agents.
2. Items such as tools, moulds, fixtures, models, matrices, templates, samples and other manufacturing aids in particular, which the PURCHASER has made available to the SUPPLIER, remain the property of the PURCHASER. If these items are manufactured for the PURCHASER, they become the property of the PURCHASER when they are created or manufactured and the SUPPLIER acts as bailee. The same applies to formulas, drawings, analysis methods and disclosed procedures. The above items, documents and procedures may be passed on to or otherwise made accessible to third parties only with the prior writ-

ten consent of the PURCHASER. A prerequisite for this consent is the notification of the intended purpose and recipient.

3. The SUPPLIER may use tools which are the property of the PURCHASER solely for making goods ordered by the PURCHASER and must insure these, at his own expense, against loss due to fire, water or theft. Any necessary maintenance and inspection work on the tools must be performed by the SUPPLIER at his own expense.

4. The SUPPLIER is aware that his personal data is stored by the PURCHASER on data media.

#### **§ 11 property rights**

1. The SUPPLIER is liable for losses resulting from infringement of patent rights and/or patent applications during contractual use of the supplied goods.

2. If a claim is made against the PURCHASER or his customers by third parties based on violation of property rights, the SUPPLIER will, on request, indemnify them against all claims arising from exploitation of such patent rights. The SUPPLIER's obligation to indemnify relates to all costs incurred by the PURCHASER or his customers from, or in connection with, the third-party claim. These include in particular the costs of legal defence and administration of rights together with all the costs of providing necessary replacements.

3. The SUPPLIER has no obligation to indemnify if the supplied goods were manufactured in ignorance of third-party patent rights according to formulas, drawings, models or other equivalent descriptions or information provided by the PURCHASER. This does not apply in the case of grossly negligent ignorance on the part of the SUPPLIER. If the SUPPLIER is not liable under Section 3, the PURCHASER shall indemnify him against third-party claims.

4. The SUPPLIER shall give written notice of using published, his own unpublished, or licensed third-party patent rights or patent applications before contract negotiations are concluded. The SUPPLIER is not entitled to claim additional remuneration for the use of his own or third-party patent rights or patent applications entailed in using the supplied parts.

5. The limitation period for the claims against the SUPPLIER referred to in § 11 is 10 years, calculated from the date of conclusion of the contract

#### **§ 12 Safety Regulations**

1. With regard to any goods supplied, the SUPPLIER must comply with the generally accepted rules of engineering, safety regulations and technical data and threshold values reflecting current technical standards or any additional standards that have been agreed. Also to be complied with in particular are: DIN, EN, ISO, the German Food Law (LMBG), the German Association of Electrical Engineers (VDE), IEC, the German Electromagnetic Compatibility of Equipment Act (EMVG), EC Directives ( e.g. EC Machinery Directive) and other relevant codes of practice.

2. The SUPPLIER undertakes to use only materials conforming to the applicable statutory safety requirements and regulations, in particular for restricted, toxic and dangerous substances. The same applies to environmental protection provisions and regulations relating to electricity and electromagnetic fields. The obligation covers all regulations that are applicable for Europe, the USA and Canada including the country of manufacture and – if there are any variances – also the regulations valid in the destination countries notified to the SUPPLIER.

3. If the PURCHASER intends to supply the subject matter of the contract to a new foreign market, he may notify the SUPPLIER of this. If stricter quality and/or manufacturing standards are in force there, the parties are obliged to obtain such information. If the SUPPLIER does not declare within one month that he is familiar with and can comply with the quality and/or manufacturing standards in force there, the PURCHASER may assume that the SUPPLIER is familiar with and is complying with the quality and/or manufacturing standards in force there.

4. If the SUPPLIER's products do not meet the requirements under Sections 1 to 3, the PURCHASER is entitled to withdraw from the contract. Any other claims for damages of the PURCHASER remain unaffected.

5. The PURCHASER must be notified of proposed changes to the products to be supplied. Any changes require the prior written consent of the PURCHASER.

#### **§ 13 Quality and Documentation**

1. The scope of delivery shall include, without additional charge, the product-specific and/or technical documentation, the declaration of conformity and any other data and certificates required for the ordered goods or their use, together with necessary marking of parts (PURCHASER's trademarks, article no., serial no., manufacturer's marks, etc.) and/or their packaging.

2. The costs for declarations of conformity shall be borne by the SUPPLIER. Declarations of conformity and all documentation and documents must, at the request of the PURCHASER, be made available in German without delay.

3. The initial sample inspection is made using the PURCHASER's "initial sample test specification".

4. Independently of this specification, the SUPPLIER must constantly verify the quality of the goods being supplied. He must notify the PURCHASER promptly of possible improvements. This applies in particular to safety-relevant components. The SUPPLIER is obliged to verify the manufacturability of the design and to perform a plausibility check. He must notify the PURCHASER in good time of any discernible errors in the specifications and of foreseeable complications.

5. a) If minimum and/or maximum parameter values have been specified at the time of ordering, the stated maximum values may not be exceeded in any part of the workpiece or product, and the parameter values must not fall below the stated minimum values.

b) This must be ensured by appropriate testing and measuring procedures and documented.

c) The PURCHASER may, at any time, request the results of this testing in writing and at no additional cost.

6. If the nature and scope of testing and the testing equipment and methods have not been firmly agreed between the SUPPLIER and the PURCHASER, at the SUPPLIER's request the PURCHASER is prepared, in accordance with his knowledge, experience and facilities, to discuss the tests with the SUPPLIER to determine the standard of testing required for specific cases. Regardless of this, testing must be at least in accordance with current best engineering practice in nature and scope and also with the remaining contractual rules or sets of rules.

7. The SUPPLIER must subject safety-relevant components to testing and this must be documented. He must note in special records when, in what way and by whom the supplied goods were tested. This also applies to the test results. Safety-relevant parts identified as such in the product-specific/technical documents or on the basis of separate agreements or whose safety relevance is self-evident must be tested. The test records must be retained for 10 years and must be made available to the PURCHASER on request without charge. The SUPPLIER must, to the extent permissible by law, place his own suppliers under an equivalent obligation by written contract.

8. Where public authorities with responsibility for production safety, production identification, exhaust-gas provisions etc. must inspect the production process and the PURCHASER's test records to verify specific requirements, the SUPPLIER assures the PURCHASER of his willingness to grant the PURCHASER the same rights in his plant and to provide all reasonable assistance.

#### **§ 14 Audit**

1. The PURCHASER is entitled to carry out an audit of the SUPPLIER himself or, at his discretion, to have it carried out by an official expert. This audit comprises an inspection of the SUPPLIER's plant and of his quality assurance system, followed by an appraisal. The findings obtained in the audit form the basis for future placement of orders and for internal grading (rating) of the plant by the PURCHASER.

2. a) The PURCHASER is entitled to perform, with advance notice, inspections of the SUPPLIER's ongoing business operations to monitor quality assurance measures.

b) Where there have been quality problems in the past, the PURCHASER is also entitled to carry out unannounced inspections to monitor quality assurance measures. The PURCHASER does not have this right if the most recent complaint relating to the SUPPLIER's quality assurance measures was more than a year ago or if no defects were found in two consecutive unannounced inspections.

c) The PURCHASER is entitled, if he can demonstrate an appropriate warranted interest, to inspect the subcontractor's records. Such warranted interest exists in particular when knowledge that enables the need for and scale of a recall to be estimated, may be obtained by this means.

#### **§ 15 General Provisions**

1. If the SUPPLIER ceases to make deliveries, or if insolvency proceedings against his assets, a court-supervised or out-of-court settlement is applied for, the PURCHASER is entitled to cancel the unfulfilled part of the contract.

2. a) If individual clauses are void, the validity of the remaining clauses of the purchasing terms and conditions is unaffected.

b) The contracting parties are obliged to replace void provisions with others that have an equivalent economic effect.

c) The same applies to omissions.

3. a) The laws of the Federal Republic of Germany apply.

b) The language of the contract, proceedings and the courts is German.

4. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

5. The place of performance and the place of jurisdiction shall be the registered office of the PURCHASER. However, the PURCHASER is optionally also entitled to bring an action against the SUPPLIER at the SUPPLIER's registered office or at the place of performance.