

Terms & Conditions
FPM Holding GmbH
Hainichener Strasse 2a, 09599 FREIBERG, GERMANY

I. Interpretation & General Information

1. The following Terms & Conditions (herein after referred to as „CONDITIONS“) apply for all business transactions that obligate the company FPM Holding GmbH (herein after referred to as „COMPANY“) to perform a contract given by the Company and accepted by a third party (herein after referred to as „BUYER“). The Conditions are an essential part of all business transactions which are based on a contract and also apply for all future deliveries and performances of a contract, even if the Conditions are not agreed on again separately.
2. No variation to these Conditions shall be binding unless agreed in writing between the authorized representatives of the Buyer and the Company. The Company's employees or agents, with the exception of the General Manager or an authorized officer, are not authorized to make any regulations deviating from this. A confirmation in writing can be transmitted by means of electronic messaging systems, especially by E-Mail or by fax, as long as a copy of the signed confirmation is transmitted.
3. These Conditions only apply for transactions with entities that are a company in accordance with art. 310 section 1 German Civil Code.
4. The Buyer's terms and conditions do not become part of the contract, even if the Company does not object to their validity separately in each individual case. Even if the Company refers to a written document or similar that contains terms and conditions of the Buyer or refers to those terms and conditions, this shall not to be understood as an acceptance of the validity of those terms and conditions.

II. Quotations and Conclusion of a Contract

1. The quotations given by the Company shall be subject to change and without obligation, provided that they are not expressly marked as binding or contain a term of acceptance.
2. No order submitted by the Buyer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company's authorized representative.
3. The description of and any specification for the goods and services that the Company is obligated to deliver or perform (e.g. dimensions, weight, settings, robustness, tolerances and technical data) and illustrations and drawings thereof are only approximations, unless the usability for an intended purpose as stated in the contract requires an exact match. These specifications are not guaranteed characteristics, but descriptions or means of identification for the goods or services that are to be delivered or performed. Customary deviations and deviations which are made due to legal requirements or which represent technical improvements, as well as the substitution of parts for equivalent parts are permissible, provided that they do not interfere with the intended purpose as stated in the contract. Such deviations shall not authorize the Buyer to cancel the contract or assert any warranty or compensation claims.

III. Delivery

1. Deliveries shall be ex works.
2. The Company shall, in the proper exercise of its discretion and with due regard to the Buyer's interests, decide which method of shipping and which type of packaging to use, unless otherwise specified by the Buyer. If delivery of the goods cannot be realized using the agreed method of transport within the intended time and without the Company being at

Terms & Conditions
FPM Holding GmbH
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- fault, then the Company shall have the right to realize the delivery in a different way or using a different method of transport.
3. Any cost for drayage/freight charges at port of destination, surcharges for express deliveries and charges for air freight deliveries shall always be at the Buyer's expense.
 4. The Company shall be allowed to realize partial deliveries, provided that the Buyer can make use of the partial deliveries with regard to the intended purpose as agreed by contract, and provided that delivery of the remaining goods is guaranteed and that there are no considerable additional expenses or cost for the Buyer involved (unless the Company explicitly agrees to bear the cost).
 5. The Buyer shall call-off the goods immediately once the goods are completed and ready for dispatch, unless there is an explicit and separate agreement with regard to the delivery; otherwise the Company shall be allowed to deliver the goods and choose the method of shipment, or store the goods at the expense and risk of the Buyer and charge the cost for storage at the Buyer's expense immediately. If the Company stores the goods, the charge for storage shall amount to 0.25% of the total invoice amount that relates to the goods that are stored for each full week. The Company reserves the right to enforce and deliver proof of further or lower costs for storage.
 6. The Company shall organize insurance for the consignment against theft, breakage, damages in transit, fire damage and water damage or other insurable risks only by specific request of the Buyer.

IV. Delivery time

1. Delivery times shall be considered as being met, if the Company informs the Buyer by the expiration date of the delivery time about the readiness of the goods for dispatch or, if shipping by the Company had been agreed, the handing over of the goods to a forwarding agent, freight carrier or other third party assigned for the delivery by the expiration date of the delivery time.
2. The Buyer's obligation to fulfill contractual commitments - especially the terms of payment that had been agreed – shall be a precondition for meeting the delivery time.
3. Delivery times and delivery dates shall be considered as an approximate indication, unless they have been agreed on explicitly and bindingly in writing.
4. If a delivery date has not been agreed on bindingly, the Company shall only then be considered as being behind schedule with the delivery after having been informed by the Buyer of a new appropriate deadline in writing. If the Company fails to meet the new deadline, the Buyer shall be entitled to withdraw from the contract.
5. The company shall not be liable for the impossibility or delay in delivery in the event of force majeure or other events that could not have been foreseen at the time when the contract was concluded (for instance interruptions of operations of any kind, difficulties in the procurement of materials or energy, delays in transit, strike, lawful lockouts, staff shortages, energy shortages or shortages in raw materials, difficulties in obtaining official permits that are required, official measures or missing, incorrect or unpunctual deliveries by suppliers). If such events result in a considerable obstacle or impossibility for the Company to deliver the goods or services, and if such obstacle is not merely temporary in nature, the Company shall have the right to withdraw from the contract. If the obstacles are merely temporary, the delivery times and deadlines for the performance of services are

Terms & Conditions
FPM Holding GmbH
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prolongated or postponed by the time period of the hindrance, plus a reasonable start-up period. If the Buyer is unable to take delivery of the goods or services due to the delay, the Buyer shall have the right to withdraw from the contract by submitting a written statement immediately.

6. If delivery of the goods or services is delayed and the Buyer is at fault, then the Company shall be compensated for the cost incurred after providing evidence for the cost.
7. The Company's liability due to a delay in delivery shall be based on the regulations stated in section IX.

V. Price of the goods and Payment

1. The prices communicated by the Company shall be understood from stock or ex works, excluding packaging, shipping charges and statutory value-added tax, unless there are any different agreements.
2. If the Company's cost prices increase due to governmental measures or similar reasons which are beyond control of the Company, or if freight charges, fees and tariff rates are introduced or increased, then the Company shall have the right to adjust the price accordingly.
3. Payments shall be made without any deductions and free of transaction charges to the Company's designated account. In order to take a cash discount, a separate agreement in writing shall be required.
4. Invoices shall be due for payment 10 days after the invoice date, unless there are any different terms of payment stated on the order confirmation. The main factor to evaluate if payment has been made punctually shall be the date of receipt of the due invoice amount on the Company's account. The consequences of a delay in payment shall be based on statutory provisions.
5. The setting-off against counterclaims submitted by the Buyer or the exercise of a right of detention by the Buyer based on such a counterclaim shall only be applicable if it has been demonstrated that these claims are beyond dispute or legally binding.
6. If, after conclusion of the contract, the Company becomes aware of circumstances which considerably diminish the Buyer's creditworthiness and which endanger the payment of moneys owing by the Buyer to the Company for the corresponding contract (including other purchase orders of the same blanket purchase agreement), then the Company shall have the right to realize pending deliveries of goods or services only upon receipt of an advance payment or a security deposit.

VI. Retention of title

1. Property in the goods shall not pass to the Buyer until the Company has received payment in full including all interests and other costs due to it, checks and bills of exchange shall only be accepted on account of performance. Until property in the goods passes to the Buyer, the Buyer shall hold the goods as the Company's fiduciary agent and bailee, and shall handle the goods with due care and insure the goods at the Buyer's own expense against damages (theft, fire, water), based on the replacement value of the goods. If necessary, the Buyer shall also organize for inspection and maintenance immediately at the Buyer's own expense.

Terms & Conditions
FPM Holding GmbH
Hainichener Strasse 2a, 09599 FREIBERG, GERMANY

2. The Buyer shall be revocable entitled to resell the goods in the ordinary course of business. The Buyer shall assign all claims and related rights to the Company which arise from the resale of the goods, notwithstanding that the Buyer processed the goods in any way prior to the resale. These claims and related rights shall be deemed to serve as security to the same extent as the reserved goods do. The Buyer shall hereby accept the assignment of such claims and related rights. Any other disposition, in particular, pledging, assignment of securities and handover of the goods to third parties by way of barter, shall not be permitted. In the event of pledging or other enforcement measures by third parties - even if the goods have been processed or used for assembly already - as well as any other impairment to the Company's property rights that relate to the goods, the Company shall be informed in writing immediately.
3. The Buyer shall be revocable entitled to collect receivables also after having assigned to the Company all claims and related rights which arose from the resale of the goods. The Company's right to collect the receivables independently shall remain unaffected by this. The Company shall not pursue the collection of receivables as long as the Buyer duly meets all payment obligations to the Company. The Buyer's authorization to collect claims shall expire, without an explicit objection thereto being required, as soon as the Buyer fails to meet any payment obligations, or in the case of a check protest or protest of a bill of exchange, or if the goods have been pledged. In well-founded cases the Company shall furthermore be entitled to submit a notice of revocation. If the aforementioned conditions are met and the Company is entitled to collect a claim, then the Buyer shall immediately, upon the Company's request, inform the Company in writing of the name of the debtors as well as other necessary information, and the Buyer shall hand over corresponding documentation on those claims (invoices or similar) and inform the debtors of the assignment of the claim.
4. The retention of title shall be extended to all products that result from any type of processing or transformation of the goods. If the delivered goods are processed or combined with materials or products which are not the Company's property, the Company shall always acquire co-ownership of the new product to such extent that the ratio corresponds to the relative value between the reserved goods and the other items at the time of processing. The provisions relating to reserved goods stated in these Conditions apply to the same extent to products which result from the processing. The Company shall also acquire co-ownership of the new product in the above indicated ratio, if the reserved goods are inseparably combined with other items which are not the Company's property. If the Buyer's part is to be regarded as the main part, then it shall be hereby agreed that the Buyer transfers a proportional amount of co-ownership to the Company. The Buyer shall hold the Company's sole or joint ownership that has been created this way in safe custody.
5. The Company shall commit itself to relinquish at the Company's own choice securities that it had been handed over, provided that the realizable value exceeds the Company's total claim which is to be secured by at least 20%. If the Buyer fails to make any payment when due or fails to comply with obligations which result from the retention of title, the Company shall be entitled to require the Buyer to deliver up the goods to the Company or, if applicable, demand the assignment of claims against the Buyer to hand over the goods to third parties. The Company shall be entitled to turn to account the goods that were taken

Terms & Conditions
FPM Holding GmbH
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back, and the proceeds of sale shall be deducted from the Buyer's liabilities, taking into account the exploitation costs in an appropriate manner.

VII. Warranties and liability

1. The Company's liability in respect of any defect in the goods shall be limited to the conditions set out below.
2. The warranty period shall be 6 months starting at the date of delivery or, if inspection and approval are required, starting at the date of acceptance.
3. The goods shall be thoroughly inspected after delivery without measurable delay either by the Buyer or a third party that has been appointed by the Buyer. If the Company does not receive a complaint in writing within eight days after delivery of the goods in respect of any apparent defects or other defects that would have been detected in the course of an immediate and proper inspection, then the goods shall be considered as accepted by the Buyer. In respect of any other defects the goods shall be considered as accepted by the Buyer unless the Company receives a complaint in writing within eight days starting at the date when the defect was discovered; if the defect had been noticeable to the Buyer during normal use at an earlier date, then the period of notification shall start at this earlier point in time.
4. In the event of a defect the Buyer shall be entitled to request of the Company to remedy the defect or demand subsequent delivery of the defective goods, unless there are any other provisions. If the remedy of defects/subsequent delivery fails, the Buyer shall be entitled to demand a reduction in the purchase price or withdraw from the contract.
5. The Company shall not be liable for any defects or damages which result from: incorrect or improper use, incorrect assembly and putting into service by the Buyer or third parties, wear and tear, incorrect or inadequate handling - in particular improper usage - inadequate operating resources, unauthorized use of substitute materials, lack of or faulty construction work, inadequate building ground, chemical, electrochemical or electrical influences, provided that the Company is not at fault.
6. Only if the complaint turns out to be justified, the Company shall bear the direct cost which result from the remedy of defects or a replacement delivery, else the cost will be charged at the expense of the Buyer. Property in the replaced parts shall pass to the Company.
7. If the goods are defective and the Company is at fault, then the Buyer shall be entitled to demand compensation based on the provisions stated in section IX.

VIII. Transfer of risk

1. The risk shall pass to the Buyer in the moment when the goods are handed over to the forwarding company, freight carrier or an appointed third party responsible for the collection or, if the Company organized the transport, in the moment when the loading of the goods begins, or when the goods leave the Company's premises at the latest, the same applies to partial deliveries and contracts for which the Company agreed to bear the cost for shipping, delivery and installation, for instance.
2. If delivery of the goods is delayed on the Buyer's request, then the risk shall pass to the Buyer on the day when the Buyer is notified of the readiness for shipment.
3. The cost for possible redeliveries shall be charged at the Buyer's expense.

Terms & Conditions
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IX. Liability for damages caused by fault

1. The Company's liability for damages, for any legal reason whatsoever, in particular due to the impossibility, delay, faulty or incorrect delivery, breach of contract, breach of duty during contract negotiations and unlawful acts shall be limited in accordance with the provisions in this chapter, provided that being at fault is a determining aspect.
2. The Company shall not be liable in the event of simple negligence of its institutions, legal representatives, employees or other assistants, unless it represents a violation of an essential contractual obligation. Essential contractual obligations are such obligations that are required to deliver and install the goods and services punctually, the absence of defects which could otherwise considerably impair functionality and usability of the goods, as well as obligations to provide advice, protection and custodial care which shall enable the Buyer to use the goods according to the contract or prevent any harm to the Buyer's staff or protect the Buyer's property from considerable damages.
3. If the Company is liable for damages in accordance with the regulations stated in the aforementioned chapter, then this liability shall be limited to damages which the Company foresaw as a possible breach of contract at the time when the contract was concluded or which the Company should have foreseen by exercising due care and attention. Consequential damages and secondary damages which result from defects of the delivered goods shall in addition only be eligible to be replaced if such damages are typical foreseeable damages that can be expected when using the goods according to their intended use.
4. In the event of liability due to simple negligence, the Company's liability to compensate for property damage and resulting financial damages shall be limited to the amount of EUR 500,000 per case of damage, even if an essential contractual obligation has been violated.
5. The aforementioned liability exclusions and limitations shall apply to the same extent to the Company's institutions, legal representatives, employees and other assistants.
6. If the Company provides technical information or advice and if providing such information or advice is not part of the performances owed by the Company as agreed by contract, then this shall be done free-of-charge and under the exclusion of any liabilities.
7. The limitations stated in this section shall not apply to the Company's liability due to intentional action, guaranteed quality features, damages to life, body or health or according to the law on product liability.

X. Sub-contract manufacturing

If the contract includes the manufacture and delivery of instruments, sub-assemblies or single parts which, in deviation of the Company's own range of products, are specifically designed to meet the Customer's requirements and which are developed and manufactured according to the Buyer's specification (contract for work and materials), then the following terms shall apply additionally:

1. The Buyer shall be responsible to provide the Company without delay with all specifications, data or drawings which are required to realize the development / manufacture of the instruments, sub-assemblies or single parts which the Buyer is interested in. If the contract involves that the Company is to deliver an instrument, sub-assemblies or single parts which have to serve a purpose set out by the Buyer, then the Buyer shall be responsible to describe the expected performances as accurately as possible based on

Terms & Conditions
FPM Holding GmbH
Hainichener Strasse 2a, 09599 FREIBERG, GERMANY

- objective criteria, and if necessary provide the Company with any plans and documentation and so forth that might be required. In any case, the Buyer shall have a comprehensive duty to cooperate.
2. The Buyer shall not be entitled to derive any claims against the Company if the goods are faulty or inadequate in accordance with paragraph 1 due to incorrect or incomplete specifications provided by the Buyer, even if this is due to negligence.
 3. The Buyer shall not be entitled to withdraw from the contract unless there is an important reason.
 4. If the delivered goods are faulty and the Company is at fault, then the Company shall be entitled to choose the type of remedy (rectification of the defect or delivery of goods that are free of defects).

XI. Location of jurisdiction, Place of performance

1. Place of performance for all deliveries and services as well as payments including redeliveries is: Freiberg/Saxony/Germany.
2. If the Buyer is a merchant, a body corporate organized under public law or special assets under public law, or if the Buyer does not have a general location of jurisdiction in the Federal Republic of Germany, then the location of jurisdiction for any disputes that result from business transactions between the Company and the Buyer shall be, based on the Company's choice, Freiberg or the location of the Buyer. However, if an action is filed against the Company, then in such cases the exclusive location of jurisdiction shall be Freiberg. Mandatory legal provisions in respect of exclusive locations of jurisdiction remain unaffected by this regulation.
3. The contract shall be governed by the laws of the Federal Republic of Germany.
4. In the event that individual provisions of the contract and these Conditions are or will be invalid or reveal gaps, then the validity and the constancy of the other provisions and the contract in its entirety shall not be affected. In this case, such legally effective provisions shall apply which the contract parties would have agreed on based on the contract's economic objective and the purpose of these Conditions if they had been aware of the gap in regulation.
5. The Buyer takes note of the fact that the Company stores data arising from the contract in accordance with section 28 Federal Data Protection Act for the purpose of data processing and reserves the right to transmit data to third parties (e.g. insurance companies), provided that this is required to perform the contract.