

# General Terms and Conditions of Purchase



## § 1 Applicability

- These General Terms and Conditions of Purchase ("GTC") are applicable to all purchasing activities between
  - FFT Produktionssysteme GmbH & Co. KG or
  - any of the associated German subsidiaries of a) hereinafter referred to either individually or jointly as "Principal" on the one hand, and on the other hand its supplier - hereinafter referred to as "Contractor".
- Legal relationships between the Contractor and Principal are governed exclusively by the following terms and conditions. Any deviations, modifications or amendments are to be made in writing. Any conditions of the Contractor which are contradictory or supplementary to, or which deviate from these conditions will not apply unless they have received the Principal's express, written approval. The acceptance of deliveries and services and payment for them without objection or also if Principal remains silent in no case constitutes acknowledgement of the terms and conditions of Contractor. Principal contradicts any and every additional or contradictory or contrary terms or conditions in proposals, order acceptances or confirmations of Contractor. The applicability of mandatory commercial law principles, in particular the doctrine of the commercial confirmation letter and Section 362 of the German Commercial Code (HGB), remains unaffected.
- As far as mutual commercial business is involved, these General Terms and Conditions of Purchase are also to be applicable to any and all future transactions between the Contractor and the Principal, even if, in an individual case, no express reference has been made to these General Terms and Conditions of Purchase.
- These Terms and Conditions of Purchasing apply for all procurements such as e.g. tools, machines, equipment, parts, raw materials, other materials, software, and performed work or services ("the delivery item" or "the supply performance").
- Inasmuch as the contractual performances are construction performances, exclusively the statutory regulations shall apply under exclusion of the VOB/B (*German Construction Tendering and Contract Regulations*).

## § 2 Offers / Orders

- Offers are to be prepared for the Principal free of charge.
- The Contractor is to draw specific attention to any points in the offer which differ from those in the enquiry documents.
- Supply contracts do not come into being until the Contractor has either provided written confirmation of the Principal's order, or begins to provide the services or items detailed in an order placed by the Principal.
- Should the Contractor fail to confirm a purchase order within a period of two weeks of receipt, and also fail to begin work on the Services or Items within the same period of time, the Principal is entitled to cancel the purchase order without being liable to the Contractor for any damages whatsoever.

## § 3 Scope of Performance / Modifications / Spare Parts

- Details of the scope of performance are to be taken from the separate order, documents mentioned in the order as also being applicable, and also these General Terms and Conditions of Purchase. Any ideas, drafts, models, samples, or other results produced by the Contractor when providing the Contractual Services or Items are part of the work performance.
- The Contractor will check any specifications, work descriptions, and other information made available to the Contractor for the execution of a supply contract, and any items, parts or other materials made available to the Contractor for the execution of the supply contract, to determine their suitability for the purpose intended by the Principal and its final customer. Should it become evident through this examination that it is necessary or advisable to make modifications or corrections to either the items provided or the object of the agreement, the Contractor is to inform the Principal without undue delay. The Principal will then inform the Contractor in writing whether, and if so which, amendments the Contractor is to make. Should the Contractor be of the opinion that such modifications might lead to a different price than that already agreed for the object of the contract, or to an inability to meet deadlines already arranged, then the Contractor is to point this out to the Principal without undue delay. Appropriate arrangements for handling any such effects, particularly with regard to additional or reduced costs and existing deadlines, are to be mutually agreed upon. If no consensus has been reached within a reasonable period of time, the Principal will decide as it sees fit.
- The Contractor will ensure that it has timely knowledge of any information and circumstances necessary to the fulfillment of its contractual obligations, and also of the use to which the Principal intends to put the deliverables. Missing documents may be used as grounds of appeal by the Contractor only if the Contractor has made a timely, written request for the said documents, and failed to receive them within a reasonable period. The Contractor is responsible for ensuring that its supplies cover all the services necessary for approved, safe usage, are suitable for their intended use, and in line with current scientific and technical standards.
- The Contractor warrants that all personnel and subcontractors deployed for performance under these Terms and Conditions are appropriately qualified to carry out the assigned tasks. The Principal is entitled to request appropriate proof of such qualifications if and to the extent necessary for assessing the performance or if there is another legitimate interest. Insofar as personal data is involved, the Contractor undertakes to comply with applicable data protection regulations, in particular the GDPR, and to obtain the necessary consents from the employees deployed. The Contractor further undertakes to deploy only those employees who have given their consent to the disclosure of their proof of qualifications.

- When performing the work, the Contractor will observe all relevant standards, laws and legal provisions under applicable law, in particular any relevant provisions appertaining to safety, environmental protection, hazardous substances and materials, and accident prevention, as well as the generally acknowledged safety-related rules and requirements of the Principal and its final customer.
- The Principal is entitled, at any time prior to approval, to request that the Contractor make modifications, particularly if these concern design and construction. The Contractor is obliged to make the modifications on the basis of the existing contractual terms and conditions, without undue delay. Should the Contractor be of the opinion that such modifications might lead to a different price than that already agreed for the object of the contract, or to an inability to meet deadlines already arranged, then the Contractor is to point this out to the Principal without undue delay. Appropriate arrangements for handling any such effects, particularly with regard to additional or reduced costs and existing deadlines, are to be mutually agreed upon. If no consensus has been reached within a reasonable period of time, the Principal will decide as it sees fit.
- The Contractor guarantees that, for a period of 10 years following delivery of the contractual items, it will be able to supply the Principal with additional Contractual Items or parts thereof as spare parts provided that, on account of technological progress, a compatible or adequate part cannot be supplied.

## § 4 Software

- If Contractor is obligated to deliver software, then Contractor grants Principal a non-exclusive, transferable license unlimited in time and place. The license fee is also deemed as paid and settled with the agreed remuneration.
- If a third party is owner of the proprietary rights and copyrights in the software, then Contractor shall ensure that Principal is granted a license in the same scope as set out in § 4 sec. 1.
- Principal is moreover entitled to replicate, process or decompile the software if this is necessary to create interoperability of the software with other programs or to remedy errors in the software.

## § 5 Deadlines / Delay / Damage Caused by Delay

- Any deadlines and delivery dates which have been arranged are binding. Adherence to agreed delivery dates or deadlines is subject to the receipt at the place of delivery of a defect-free delivery or service, or successful completion of the approval procedure or other performance test, if previously agreed upon or legally required.
- The Contractor is obliged to give the Principal immediate notification in writing of any discernible delay in its performance, any foreseeable possible delay in its performance, or any discernible or foreseeable problems in delivering in the agreed quality. Delays not caused by the Contractor itself may not be used as grounds of appeal unless the Contractor has fulfilled its obligation to notify the Principal.
- Notification of delays by the Contractor and any related adjustment of the agreed delivery dates will by no means exempt the Contractor from any consequences arising from such delays, unless, when extending the delivery date, the Principal issues a written statement expressly waiving the matter of the consequences of the delay. Hence, despite the extension of the delivery dates following notification of delays by the Contractor, the Principal still remains entitled to all of its claims pursuant to the supply contract which result from, or are connected with, the Contractor's delay.
- Should the Contractor fall behind with the contractually agreed performance, the Principal is entitled to claim liquidated damages from the Contractor, without setting any further deadlines. The amount owing for every commenced week of delay is 0.5% of the total value of the order, but must not exceed 10% of the total value of the order. Contractor is entitled to present evidence to the effect that significantly less damage has occurred. This does not prejudice the assertion of further rights. In so doing, the any liquidated damage must be credited to an actually occurred and asserted default damage. The right to demand payment of the flat rate damage compensation is not forfeit in the event that the late delivery is 

accepted	without	reservation.
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 Liquidated damages can be claimed by the Principal until the contractual items have been paid for in full.

## § 6 Force Majeure

- In the event of acts of God, in particular labour disputes, civil unrest, official measures and other unforeseeable, unavoidable and serious events, the parties to the contract are to be temporarily relieved of their obligations for the duration of the disturbance. The parties are obliged to supply the necessary information without undue delay, insofar as reasonably possible, and to adapt their commitments to the changed circumstances in good faith.
- Should acts of God cause obligations to be suspended for a period exceeding two weeks, the Principal will be entitled to terminate the contractual relationship with immediate effect. In this case, the Contractor will be entitled to request reimbursement of any expenditure it can prove to have incurred up to the suspension of contractual obligations, being at that time confident of the validity of the contractual relationship.

## § 7 Prices / Terms of Delivery and Payment / Transfer of Debts / Offsetting / Withholding right

- The agreed prices are flat rate fixed prices. Hourly rates quoted in the proposal are solely for the sake of costs transparency. Anything else shall only apply if it is explicitly agreed in writing that billing shall be exclusively according to units on the basis of negotiated hourly rates.

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2. The prices are inclusive of all expenses incurred by the Contractor, e.g. cost of materials, use of equipment, travel expenses, transport, insurance, packaging franco domicile, customs duties, taxes, etc.
3. If a payment schedule has been agreed upon, payments are to be made upon receipt of the respective partial invoice in compliance with the dates and instalments stipulated in the payment schedule. Prior to official acceptance of the entire work by the Principal or the end customer, any and all payments will be effected as payments on account, without acknowledging the work rendered so far as complete performance. In any event, the final instalment will not be invoiced until delivery has been made in full, and any official acceptance of the overall performance required by either the contract or law has been given. The Principal is entitled to withhold payment of the final instalment or a maximum of 10% of the order value until the warranty period has expired. The Contractor is entitled to replace any such amount retained by means of a directly enforceable bank guarantee (waiving the defence of preliminary injunction on first demand).
4. Invoices are to be issued to the Principal in triplicate, and to indicate purchase order number, and the purchase codes and numbers of each item. Further, the invoice must include all the details needed to authorise the deduction of input tax, in particular tax number or VAT ID number, and other mandatory details of an invoice as per the relevant legal provisions of applicable law. Should the invoice fail to include the above-mentioned data, then the Principal is not obliged to pay the VAT shown. Should the Principal be unable to deduct input tax due to an invoice's having not been issued in due form, then VAT paid by the Principal is to be refunded by the Contractor.
5. Terms of payment are to be either within 14 working days less 3% discount, or within 90 calendar days net, using the means of payment of the Principal's choice. Periods allowed for payment begin with the latest of the following: (a.) delivery or approval of the work, (b.) receipt of invoice, or (c.) the delivery period as stated in the purchase order.
6. Deliveries are to be effected on the terms "Delivery Duty Paid" ("DDP") (as per Incoterms 2020), unless otherwise agreed in the individual order.
7. The Contractor is not entitled to assign its claims to or have them collected by third parties. Should the Contractor assign its claims on the Principal to a third party without the consent of the Principal, and contrary to the first sentence, then the assignment will still be effective. The Principal can, however, choose for itself whether to effect payment, with the effect of a full discharge of the obligation, to the Contractor or to the third party.
8. The Principal's payments will be regarded as having been effected as soon as the Principal has issued instructions for them to be paid.
9. The Principal shall be entitled to offset payments; this shall also apply to any amounts owed to its affiliated company by the Contractor, and likewise to any amounts owed to the Contractor by an affiliated company.
10. In the event of defective deliveries, the Principal will be entitled to withhold a proportion of the value of the payment until delivery has been correctly completed.

## § 8 Material Provided by the Principal / Tools / Requests for the Return of Goods

1. Any drafts, samples, production resources, models, data carriers, prototypes, diagrams, drawings, documents, materials, equipment, components, parts, containers, packaging, tools, measuring instruments, fixtures, samples or other objects provided, even on a lending basis, to the Contractor by the Principal (hereinafter referred to as "Materials Provided"), which, according to the terms of the contract, are located at the Contractor's premises, are not the property of the Contractor, but will remain the property of the Principal, unless an alternative arrangement has been expressly agreed upon.
2. Any Materials provided are to be examined and checked by the Contractor immediately, and any complaints to be submitted to the Principal in writing without undue delay. The Contractor may use the Provided Materials for the production of Contractual Items for the Principal only, and must not use them, nor allow others to use them, for any other purpose without the prior written consent of the Principal.
3. Provided Materials must be clearly marked as being the property of the Principal, and, with the due care and diligence of a prudent business person, kept in a safe place, separate from other items, and at no charge to the Principal. The Contractor is to handle the Provided Materials in a careful and proper manner, keep them in good condition at its own expense, replace them if necessary, and indemnify the Principal for any claims, costs, or damage resulting from or in conjunction with the mounting, usage, storage or repair of the Provided Materials. The Contractor bears all risks for the Provided Materials as long as they are in its custody or under its control. The Contractor is obliged, at its own expense, to insure the Provided Materials against all insurable risks (all risk insurance) in the amount of the replacement value. The Contractor hereby, in advance, assigns to the Principal its claims against the insurer. The Principal hereby accepts this assignment.
4. The Principal, or a third party appointed by the Principal, is entitled at any time during normal business hours to enter the business premises of the Contractor and to inspect the Provided Materials and notes relating to these.
5. The Principal is entitled, without the need to give any specific reason for doing so, to remove the Provided Materials or to demand their surrender at any time. Should the Principal make any such request, the Contractor is to surrender the Provided Materials without undue delay, prepare them for shipping, or deliver them to the Principal against reimbursement of reasonable transportation costs. The Contractor has no right of retention or lien on the Provided Materials whatsoever.
6. When work is carried out on Provided Materials, the Principal will become the owner of the new or reshaped item from the very time it is being processed. The Contractor will store the new or reshaped item for the Principal, free of charge, and with the due care and diligence of a prudent business person.

7. Ownership of any auxiliary models and tools, models, moulds, etc (hereafter referred to as "Tools") produced by the Contractor which are required for the performance of the contract will be transferred to the Principal upon generation thereof. In this way, Tools are to be dealt with in the same way as Materials Provided. The Principal is entitled, at any time and at its own discretion, to claim possession of the Tools, against payment of any costs which can be proved to have been incurred when producing the Tools and which, at the time when their return was requested, had not been amortised either by payments or the price of parts. Even if no agreement has been reached regarding the production costs to be refunded in accordance with this provision, the Contractor is still obliged to return the Tools without undue delay. The Contractor has no right of retention whatsoever. Principal has the right to demand that Contractor has the tools destroyed free of cost for Contractor after order completion. The destruction of tools requires the written consent of Contractor.

## § 9 Subcontracting

Subcontracting to third parties is only permitted with the written consent of the Principal. Should the Contractor violate this rule, the Principal is entitled to cancel the contract with immediate effect (Good cause for cancellation).

## § 10 Inspection of Incoming Goods / Acceptance / Transfer of Risks / Transfer of Title / Retention of Title

1. The Contractor shall apply the customary care and attention to ensure that the deliverables are free of defects. For this reason, the Principal will restrict his inspection of incoming goods to checking identity and quantity (comparison of the delivery note with information on packaging) and external condition (transport damage in particular). For deliverables for which no defect of any type can be detected in this way, the Principal shall retain the right to complain until such time as the processing of the deliverables has been completed in the course of the Principal's regular business operations. Insofar, the Contractor shall waive the right to object to the late notification of defects in accordance with § 377 HGB (German Commercial Code) and to the legal consequences set out in § 377 section 2 and 3 HGB.
2. Insofar as the underlying law or contractual agreements call for acceptance of the Contractual Item, the Contractual Item will be deemed to have been accepted upon receipt of the written acceptance certificate. If, following receipt of written notification from the Contractor to the effect that a Contractual Item is ready for approval, the Principal should fail to fulfil its duty to attend the inspection, then the Contractual Item will be considered to have been accepted four (4) weeks after initial operation and notification of readiness for approval, provided that during this period no defects which would impede acceptance have been claimed for by the Principal.
3. Should the contract performance of the Contractor form an integral part of the overall performance required of the Principal by its end customer, then, without there being any call for an express statement, acceptance of the Contractor's performance will not be deemed complete until the Principal's end-customer has granted final approval of the Principal's overall performance. Under no circumstances do payments constitute acceptance of the Contractual Item.
4. Unless, on an individual contract basis, an alternative arrangement has been made in writing, then, insofar as the aforesaid provision calls for acceptance, all risks are transferred upon acceptance of the Contractual Item, or otherwise when delivery of the Contractual Item has been made in full.
5. Insofar as the Contractual Item is to be produced by the Contractor itself, the Principal will assume ownership from the time it comes into existence, or failing this upon delivery to the Principal.
6. Any retention of title to Contractual Items supplied to the Principal by Contractor is ruled out, unless the Principal has given its express written consent in a separate agreement.

## § 11 Non-disclosure

1. Contractor commits to keep strictly secret all not publicly known commercial and technical details that become known to Contractor through the business relationship and to safeguard them against unauthorized insight, loss or use. This applies in particular to any information provided by the Principal (jointly referred to in the following as "Information"). Information must not be made available to, or handed over to, unauthorised third parties without the Principal's written approval. This does not apply to Information which (a) is or becomes generally known, without any breach of this obligation, (b) is made known to the Contractor by a third party, without breach of any relevant obligation, or (c) the Contractor can prove either to have possessed before this obligation came into effect, or to have developed independently subsequent to its coming into effect.
2. The copying or reproduction of such Information is admissible only within the framework of business requirements and copyright regulations. Upon completion of the work and in compliance with the non-disclosure provision, any and all Information that has been given to the Contractor is to be returned unbidden to the Principal, or, if the Principal agrees, safely destroyed. The Contractor will not retain or keep any copies, duplicates, etc unless legally required to keep records. Subject to any further rights, the Principal is entitled to demand their immediate surrender, should the Contractor be in breach of duty.
3. Employees and subcontractors are to be bound by similar non-disclosure obligations.
4. Unless other terms have been agreed upon in the purchase order, this non-disclosure obligation is to remain in force for a period of five (5) years after delivery and/or performance.

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5. The Contractor is not entitled to use these business relations for advertising purposes without the written approval of the Principal.

## § 12 Liability for Defects

- The Contractor guarantees that any Contractual Items it supplies
  - are in accordance with the contractually agreed specifications;
  - are free of design, manufacturing and material defects;
  - are, at the time of approval, in line with the latest scientific and technical standards;
  - are in accordance with all legal, official and industrial standards and requirements relevant at the time of approval, in particular any provisions pertaining to safety, environmental protection, buildings, hazardous substances and materials, and accident prevention, as well as any quality assurance specifications of the Principal and its final customer;
  - are suitable for the contractually agreed purpose or for the purpose evident to the Contractor.
- Should Contractual Items fail to satisfy the requirements mentioned above, the Principal can, at its discretion, request the Contractor to rectify the defects at its own risk, or to replace defective items with Contractual Items which are free of defects. In the case that Contractor fails to fulfill this obligation within an appropriate period of time or refuses to remedy the defect or make replacement delivery or if special circumstances demand immediate action, then Principal can at the cost of Contractor – after informing Contractor – himself remedy the occurred defects or perform replacement delivery free of defects or have the defect remedied or the supply performance replaced by a third party.
- In addition, the Contractor is to reimburse the Principal for any expense incurred in connection with the rectification of defects or the replacement of defective Contractual Items (including transport, handling, installation / dismantling, material and labour costs).
- There is a guarantee period of 36 months valid from the date of delivery (contracts for sales and services) or approval by the Principal (contracts for work performance). Should the Contractual Item form part of an overall performance to be provided by the Principal to its customer, then the guarantee period is to be 36 months from the date of approval by the Principal's own customer of the overall performance; however, this will not exceed a period of 48 months from delivery to the Principal.
- Should any defect occur within the first 12 months following the start of the guarantee period, it will be assumed that the defect already existed on the date of transfer of risk or approval, unless evidence is furnished by the Contractor of the defect's being attributable to fault or negligence on the part of the Principal.
- Any further legal or contractual claims remain unaffected.

## § 13 Other Liability / Insurance

- The Contractor is liable for any claims arising from the infringement of granted and registered industrial property rights during usage of the deliverables and services in accordance with the terms of the contract. The Contractor will indemnify and hold harmless the Principal and its customers from any claims arising from the infringement of any such industrial property rights. This does not apply in cases where the Contractor is working according to drawings, models, data etc. provided by the Principal, and does not know, or, in connection with the services it is providing, does not need to know that industrial property rights are being infringed as a result. In the event of infringement, the Principal is entitled, at the Contractor's expense, to obtain from the owner of such industrial property rights the necessary authorisation to deliver, commission, use, resell, etc. the contractual item. This will in no way prejudice any further claims for damage the Principal might have.
- The Contractor will indemnify and hold harmless the Principal from any third party claims arising from product liability, if and insofar as it is responsible for the damage which has occurred, and will reimburse the Principal for any expenses incurred by or in connection with any recall action or service measures undertaken by the Principal or one of its customers. The Principal will - as far as possible and reasonable - inform the Contractor of the contents and extent of any recall or service action, and give the Contractor the opportunity to comment. The principles of § 254 BGB (German Civil Code) will apply accordingly to damage adjustment between the Principal and the Contractor.
- Should the deliverables provided by the Contractor include any work on the business premises of the Principal or one of its customers, then the Contractor will implement any and all precautionary measures necessary to prevent injury to persons or damage to property. The Contractor will indemnify and hold harmless the Principal from any damage, costs and expenditure occasioned by work carried out by the Contractor on the business premises, unless the damage etc. was caused through no fault of the Contractor.
- The Contractor is liable to the same degree for any negligent conduct of its representatives or subcontractors as it is for its own.
- The Contractor undertakes, in particular with regard to personal injury, damage to property and financial loss, to take out and ensure insurance coverage that is adequate and customary in terms of both purpose and amount covered. If requested to do so, the Contractor is to submit the appropriate confirmations of insurance to the Principal. The Contractor hereby and in advance transfers to the Principal title to any insurance benefits arising in connection with the Contractual Items, and the Principal accepts this transfer of title. The fact of insurance having been taken out and title to insurance benefits transferred does not in any way limit the liability of the Contractor.
- Any further legal or contractual claims remain unaffected.

## § 14 Title to Results of Work / Industrial Property Rights, Know-How, Intellectual Property Rights

- The Principal is to receive an exclusive, unlimited, sub-licensable and irrevocable right of exploitation on the results of the work in their entirety; this right being transferable and settled in full through payment of the total amount. Furthermore, the following conditions are to apply with regard to the industrial property rights included in the work results.
- In these General Terms and Conditions of Purchase, "industrial property rights" are rights to, under or over patents, patent applications and legal applications by inventors, registered designs, inventions, and any other registrable rights, including the applications and requests for their application.
- The Contractor undertakes to exercise due care and attention, including patent searches, to achieve work results which do not infringe on the rights of third parties. Should the use of third parties' rights not at the disposal of the Contractor become unavoidable or advisable, the Contractor is to inform the Principal without undue delay, submitting the appropriate documents and reasons at the same time. The Parties will consult together to determine how to progress with contractual work until such time as the Principal gives its opinion on the possibility of utilising the rights of third parties.
- Should the work results contain industrial property rights resulting from work performed by the Contractor prior to or during execution of the order, but which can be proved to have resulted independently of the contractual work ("background industrial property rights"), the Principal is to receive a transferable, sub-licensable, non-exclusive, irrevocable licence for these property rights, settled in full through payment of the total amount. The licence is limited to the utilisation of the background industrial property rights within the context of the utilisation of the work results or essential parts thereof. The same applies to background know-how.
- Should the Contractor intend to utilise background industrial property rights in the work results, then it is obliged to notify the Principal accordingly in writing beforehand, so as to obtain from the Principal permission to make use of these industrial property rights. The Parties will consult together to determine how to progress with contractual work until such time as the Principal gives its opinion.
- The Principal has the right of first refusal with regard to the acquisition of any industrial property rights created by the Contractor and/or its staff, alone or in cooperation with staff of the Principal, when working on the order ("priority industrial property rights"). To ensure that the Principal has the opportunity to exercise its right of first refusal, the Contractor will offer the Principal any and all industrial property rights registered in connection with the work results, or otherwise brought to its knowledge, in writing, within two (2) months of registration or knowledge thereof at the very latest. Any charge for these will be deemed to have been settled with payment of the total amount. The Principal is entitled to transfer the right of first refusal for the acquisition of industrial property rights to an associated company. Should the Principal have no interest in acquiring exclusive industrial property rights in its own name, the Principal and Contractor will come to an agreement on the acquisition of joint industrial property rights, sharing the cost. The Principal is entitled to name an associated company to be entered in its stead in the application for industrial property protection. Unless otherwise agreed, the Principal has, in the event of a joint application for industrial property protection, the irrevocable, transferable, sub-licensable, unlimited, non-exclusive right of use of the industrial property right in its entirety. Any charge for these will be deemed to have been settled with payment of the total amount. Should the Principal also have no interest in acquiring joint industrial property rights, the Contractor can acquire industrial property rights at its own discretion, in its own name and at its own expense, although the Principal is still entitled to the irrevocable, transferable, sub-licensable, unlimited, non-exclusive right to make use of these industrial property rights free of charge. Any charge for these will be deemed to have been settled with payment of the total amount. Whichever Party is not involved in acquiring the industrial property rights consents to support and submit at its own expense any statements necessary to the acquisition and defence of the industrial property right.
- Should the work results of the Contractor or its employees include a design suitable for registration as a design patent, the Contractor will, at the time it is produced, transfer any title to rights over the design to the Principal. The Principal is entitled to effect official registration of the design at its own discretion. Any charge for these will be deemed to have been settled with payment of the total amount.
- Insofar as any services or work of the Contractor are entirely or partially protected by copyright, the Contractor herewith grants the Principal the exclusive, irrevocable, sub-licensable, transferable right, unlimited in terms of time, place and content, to use these work results free of charge and in any way it wishes, in particular to duplicate, propagate, display, modify and adapt them. Any charge for this will be deemed to have been settled with payment of the total amount.
- Subject to any other legal requirements, the Contractor bears sole responsibility for the payment of its own employees.
- In the event of work being delegated to subcontractors, the Contractor is responsible for ensuring that the Principal still has analogously similar rights.

## § 15 Termination of Contract

### Cancellation

- The Principal may terminate the contract at any time without notice, and without giving reasons; such termination may refer to the contract in its entirety, or to a part thereof. Any such termination must be submitted in writing.
- In the event of ordinary termination, the Principal will pay the proportion of the complete remuneration that will cover all services that can be proved to have been provided by the Contractor up to the date on which the termination comes

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into force. However, in the event of a partial termination, payment will not be due before the agreed date of payment for the services performed.

- Over and above the provisions in § 15.2, the Principal will, in the event of entire or partial termination, reimburse the Contractor with any costs which can be proved to have been incurred by the latter with a view to and for the direct purpose of executing the terminated part of the order with due commercial care and attention, and which, within the bounds of possibility and reasonableness, could not be avoided.
- In the event of ordinary termination, no further claims on the part of the Contractor, for any legal reason whatsoever, will be deemed to exist. In any event, the maximum remuneration to be paid by the Principal as per point 15 will not exceed the sum total of the order.
- If, in the event of ordinary termination, a contract is arranged between the Principal or one of its associates and the Contractor, and the Contractor's capacities thus released could be used to this end, then the payments as per § 15.3 should be taken into consideration, if at all possible.

## Termination for Good Cause

- The Parties may terminate the contract for good cause at any time without notice (extraordinary termination). Good cause shall in particular be deemed to exist if, in the event of the breach of any contractual obligation incumbent upon the Contractor, the Contractor should fail to remedy the situation in full within a reasonable period of time set by the Principal. Good cause shall also be deemed to exist in the event of insolvency proceedings being instituted on the Contractor's assets, or in the event of a substantial deterioration in the financial circumstances of the Contractor, or threat thereof, as a result of which the fulfilment of contractual obligations, in particular obligations to deliver, might be jeopardised.
- In the event of extraordinary termination for reasons imputable to the Contractor, the Principal will recompense the Contractor only for zero-defect services which can be proved to have been provided prior to the termination date, whereby the actual value of the services provided will be in proportion to the value of the sum of all services owed. No further claims on the part of the Contractor, for any legal reason whatsoever, will be deemed to exist. In any event, the maximum remuneration to be paid by the Principal as per point 15 will not exceed the sum total of the order.
- The Principal reserves the right to assert further claims in the event of extraordinary termination by the Contractor.

## Withdrawal

- Should the Principal decide to exercise the right to withdraw from the contract, notice of withdrawal must be made in writing.
- In such a case, the Principal is entitled to pay compensation instead of returning or surrendering services previously received. The amount of compensation will be in line with the value of services provided at the time at which notice of withdrawal is issued.

## **§ 16 Right to Inspect**

- Provided the Principal gives prior notice of its intended visit, the Contractor undertakes to grant the Principal, its customers and regulatory authorities access to its business premises at any time during normal business hours, to enable the Principal to inspect any documents relating to a purchase order, and thus verify the correctness of the Contractor's performance and the accuracy of each invoice line item.
- These documents are to be kept available for such inspection for a period of five (5) years following termination of the contract.
- Should the Contractor employ subcontractors, the Contractor will ensure that that they grant the Principal analogous rights.

## **§ 17 Compliance**

Contractor is obliged to be fully aware of the principles in FFT's Sustainability Guideline for Suppliers and Business Partners (the "Sustainability Guideline") which is available on FFT'S website ([www.fft.de](http://www.fft.de))

Contractor understands that adherence to the Sustainability Guideline is essential for any business relationship with FFT. Consequently, Contractor agrees to inform FFT immediately in the event of a breach of the principles of FFT's Sustainability Guideline. Contractor shall immediately remedy any violation notified by him or detected by FFT. If this fails within a reasonable time, then FFT shall be entitled to extraordinarily terminate any agreement for good cause.

In addition, Contractor shall indemnify FFT and hold FFT harmless with respect to any liability arising from the violation of the FFT Sustainability Guideline by Contractor or any of his Contractors with respect to the goods or services used in the supply chain.

## **§ 18 Compliance with Minimum Wage Act, provision of surety, special right of termination**

- The Contractor guarantees that each of its employees is continuously and promptly remunerated at a level not less than the respectively applicable statutory minimum wage. The Contractor shall also impose commensurate obligations on any subcontractors and employment agencies with whom the Contractor maintains contractual relations.
- With respect to subcontractors and employment agencies with whom the Contractor or its subcontractor maintain contractual relations, the Contractor guar-

antees that each worker employed by such is continuously and promptly remunerated at a level not less than the respectively applicable statutory minimum wage.

- In compliance with the provisions of data protection law, FFT is entitled to inspect company documentation for the purpose of substantiating the Contractor's obligation to pay the minimum wage. To this end, the Contractor shall provide at the request of FFT commensurately verifiable documentation free of charge within a suitable period, in particular documents pursuant to Section 17 of the German Minimum Wage Act (MiLoG) and payrolls, both in duly anonymised form. The Contractor shall also impose commensurate obligations on any subcontractors and employment agencies with whom the Contractor maintains contractual relations.
- The Contractor indemnifies FFT from all liability pursuant to Section 13 of the German Minimum Wage Act (MiLoG). In the event of any claim asserted against FFT pursuant to Section 13 MiLoG by employees of the Contractor, its subcontractors or employment agencies with whom the Contractor maintains contractual relations, regardless of culpability the Contractor is strictly liable for all respective costs of the claim. To safeguard this right of recourse, upon request the Contractor is obliged to provide FFT with an adequate level of surety in the form of an irrevocable and unconditional absolute guaranty at the first request of a bank or credit insurer authorized to perform such transactions in Germany. The costs of the guaranty shall be borne by the Contractor.
- Should the Contractor breach its obligations under para. 1 or in the event of any claims asserted against FFT pursuant to Section 13 MiLoG by employees of the Contractor, its subcontractors or employment agencies used by the Contractor, FFT shall be entitled to terminate orders and other agreements, including partially, without notice.

## **§ 19 REACH/ Export Control/ Conflict Minerals/RoHS Directive**

- Should regulation (EC) No. 1907/2006 of 18th December 2006 ("EC 1907/2006") be applicable to delivery items or services, then the Contractor guarantees that such delivery items or services comply with the requirements of EC 1907/2006 and all national regulations passed in the implementation of EC 1907/2006 (hereinafter "REACH"). The Contractor guarantees that all REACH-related obligations will be satisfied, including (pre-)registration, the provision of safety data sheets in accordance with REACH standards and IMDS data sheets. Should any delivery items or services provided fail to comply with REACH, the Principal reserves the right to withdraw from or terminate outline agreements or individual orders. The Contractor undertakes to inform the Principal without undue delay of any changes which would adversely affect compliance with REACH.
- The Contractor is to inform the Principal of any permits and reporting obligations required by the authorities for the import and operation of the Contractual Items. Contractor is especially obliged to comply with the export control regulations in effect at the point in time delivery is made. Without being separately requested to do so, Contractor must notify any export control designation of the contract items or parts thereof according to applicable law at the point in time of delivery, especially under the relevant EU and US regulations, to Principal in writing no later than with the delivery. The relevant export control list and list position are to be designated for every contractual item - or part thereof - subject to export controls. Where goods and services to be delivered to the Principal involve technologies in terms of technical knowledge, which are subject to US (re-)export regulations (EAE, ITAR), the European Dual Use regulation or to the German Export Control List, Contractor shall be obliged to inform the Principal within his offer in writing about this circumstance
- Contractor shall be obliged to provide at its own expense the required declarations and information under Regulation (EU) No. 2015 / 2447, allow checks to be performed by customs officials and furnish the requisite official letters of confirmation.
- The Contractor guarantees that the delivered parts and products contain no conflict raw materials.

The Bonn International Centre for Conversion, which was founded in 1994, defines conflict raw materials as follows:

"Conflict resources are natural resources whose systematic exploitation and trade in a context of conflict contribute to, benefit from or result in the commission of serious violations of human rights, violations of international humanitarian law or violations amounting to crimes under international law".

The Contractor shall also ensure that the supplied parts and products do not contain any "conflict minerals" as defined in Title 15, Section 1502 of the U.S. Dodd-Frank Act e.g. columbite-tantalite (tantalum), cassiterite (tin), gold, wolframite (wolfram or other derivatives) from the

Democratic Republic of Congo or one of their neighbouring countries (Angola, Burundi, Central African Republic, Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda and Zambia) - the so-called DRC Region.

Supplier has implemented reasonable measures to meet those requirements.

- The Contractor guarantees that it will comply with the requirements of Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (Restriction of Hazardous Substances -RoHS) as well as the requirements of the national implementation in particular the directive on the restriction of the use of hazardous use of hazardous substances in electrical and electronic equipment (Elektro- und Elektronikgeräte-Stoffverordnung - Elektro-StoffV) shall be complied with. Furthermore, the contractor shall ensure that the delivered electrical and electronic equipment in accordance with § 5 ElektroStoffVO is marked with a type, batch or serial number or other mark serial number for identification purposes.

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6. In the event that the Contractor violates any of the obligations under this Section 19, the Contractor shall indemnify the Principal and its customers against all costs, claims of third parties (in particular direct or indirect claims for damages) and other disadvantages (e.g. fines) resulting from the violation of this Section 19. Costs of legal proceedings included. This shall not apply if the Contractor is not responsible for this breach of duty. Furthermore, the Principal shall be entitled at any time to cancel the corresponding order without delay and to refuse acceptance of the corresponding delivery without incurring any costs. Possible claims for damages remain unaffected by this. Cancellation or refusal of acceptance shall not constitute a waiver of any claims for damages.

## § 20 Data protection

1. The Contractor shall ensure that everybody involved in the execution of the contract complies with the statutory regulations relating to data protection, especially when processing personal data. These persons must give an undertaking as required by data protection law to safeguard data confidentiality before they first start their work and evidence of this must be supplied to FFT on request.
2. If the Contractor processes personal data during the provision of the works or service, it undertakes to conclude an agreement for data processing in the order with FFT on the basis of the respective FFT-Standard Agreement which can be provided by FFT on request. The Contractor has to ensure that any other necessary agreements for processing personal data are also concluded by its subcontractors. It may be necessary in individual cases that these agreements must be concluded directly between FFT and the subcontractors.

## § 21 Rights to FFT Data

1. "Data" for the purpose of these GTC refers to characters (e.g. numbers, letters or other symbols) or patterns of characters, which are stored electronically, magnetically or in an otherwise not immediately perceptible way, or that are transferred or documented in any other form (e.g. paper).
2. "FFT Data" for the purpose of these GTC refers to Data that
  - a) a company of FFT Group provides the Contractor with, either by itself or via a commissioned third party,
  - b) the Contractor creates upon order of FFT,
  - c) the Contractor creates without order of FFT in connection with the Service Provision, but stores on data carriers that are perceptibly owned or possessed by FFT at the time of their storage.
  - d) result from a processing of Data in the sense of § 21 sec. 2 a) to c) in connection with the Service Provision, or
  - e) the Contractor creates or obtains by any action according to § 21 sec. 5 b) to d).For the purpose of these GTC, providing Data is equivalent to providing access to Data, creating Data is equivalent to collecting Data.
3. In relation to the Contractor and subject to data privacy law and other mandatory legal provisions, companies of FFT Group are entitled to use FFT Data at their own discretion and without restrictions in terms of time, place or content, especially to reproduce it, process it, provide it to third parties or exploit it.
4. The Contractor is entitled to
  - a) use FFT Data pursuant to § 21 sec. 2 a) to d), as far as it is necessary for the Service Provision,
  - b) provide FFT Data pursuant to § 21 sec. 2 a) to d) to subcontractors, as far as it is necessary for the Service Provision and provided that the subcontractors were contractually bound in a way equivalent to these GTC prior to the transfer,
  - c) provide FFT Data to third parties, as far as it is necessary pursuant to judicial, administrative or mandatory rules or orders, always provided that the extent of the disclosure shall be kept as limited as possible and the Contractor shall notify FFT in writing of a required disclosure prior to such disclosure, unless such notice could not reasonably be given,
  - d) provide FFT Data to public authorities or, in case of a lawsuit with FFT to courts, as far as it is necessary for the enforcement of its rights or for the defense against claims,
  - e) provide FFT Data to its consultants that are professionally bound to discretion (e.g. lawyers, auditors and/or accountants), as far as it is necessary for the provision of the consultancy services of such consultants and as far as the Contractor ensures that such consultant does not provide FFT Data to third parties or exploits it in any other way.

The Contractor's rights regarding Data, which the Contractor itself provides in the course of the Service Provision and which is not considered FFT Data, remain unaffected.

5. Unless authorized under § 21 sec. 4, by statutory provisions or by explicit consent of FFT, the Contractor is not allowed to
  - a) provide FFT Data to third parties without order of FFT,
  - b) obtain or to reproduce FFT Data without order of FFT, especially by means of functions listed in § 22 sec. 4,
  - c) create Data without order of FFT in connection with the Service Provision, if it concerns items (e.g. machinery), that are perceptibly owned or possessed by FFT at the time of their creation.
6. If the Contractor violates an obligation under § 21 sec. 5, FFT notwithstanding other contractual and statutory rights (especially injunction, rectification and compensation) has a right to be informed of existing Data and their use.
7. Upon request of FFT the Contractor shall hand over to FFT all FFT Data completely and free of charge, or – if this is neither possible nor reasonable for the Contractor – to give FFT access to the data carriers, on which such FFT Data is stored.

8. Immediately after the end of Service Provision the Contractor shall destroy any and all FFT Data in a way that renders a reconstruction of the FFT Data impossible. Upon request of FFT, the Contractor shall immediately confirm the successful destruction in writing. Prior to any destruction, the Contractor shall inform FFT about the envisioned destruction. If FFT doesn't object to the destruction within one month after the Contractor's notification, the Contractor shall carry out the destruction. The obligations according to sentence 1 do not apply, insofar and to the extent that FFT Data are subject to a legal obligation to preserve records.

9. The Contractor is not entitled to a right of retention against FFT's claims for destruction or handing over of FFT Data.

10. This § 21 shall not restrict or suspend in any way in particular
  - a) ownership or possession rights of FFT,
  - b) intellectual property rights of FFT, especially rights under copyright law, as well as assigned or granted rights of use and permissions,
  - c) legal provisions and agreements establishing non-disclosure obligations or exploitation restraints for the Contractor,
  - d) legal provisions and rights with regard to personal Data (data privacy laws).
11. The terms set out in this § 21 shall also apply after the expiry or termination of a contract.

## § 22 Information Security

1. FFT Data shall be treated as industrial and commercial secrets of FFT Group. The Contractor is obligated to ensure that FFT Data and own Data necessary for the Service Provision is protected by appropriate measures according to customary industry standards against unauthorized access, alteration, destruction and other misuse ("Information Security"). The Contractor shall in particular strictly treat and keep FFT Data separated from Data of other customers and in addition establish appropriate protective measures to prevent access of FFT Data by other customers. Insofar as the storage of FFT Data is part of the Service Provision, the Contractor takes any and all necessary precautions currently state of the art in order to be able to restore the FFT Data legally admissible and without loss at any time.
2. Depending on the protection requirements of the respective FFT Data or the importance of the Contractor's service for FFT's business operations, FFT may request a particular amount of protective measures as well as proof of an appropriate level of Information Security within the Contractor's business of a kind specified by FFT, especially by submission of appropriate certificates (e.g. ISO/IEC 27001 "Information Technology – IT security procedures – Information Security Management Systems-Requirements") or by attestation according to the VDA-model "TISAX" (Trusted Information Security Assessment Exchange).
3. The Contractor shall ensure that no potentially harmful software (e.g. viruses, worms or Trojans) is deployed during the Service Provision, e.g. via drivers or firmware included in the delivery. The Contractor shall inspect this by appropriate means and, at FFT's request, confirm in writing that it has found no indications of harmful software during such inspections.
4. The Contractor ensures that the software deployed within the scope of the Service Provision does not contain any functions that jeopardize the integrity, confidentiality or accessibility of the contractually agreed services, other hard- and/or software or Data, e.g. by way of functions
  - a) for unwanted extraction or removal of Data,
  - b) for unwanted alteration/manipulation of Data or the processing logic, or
  - c) for unwanted induction of Data or unwanted functional expansions."Unwanted" for the purpose of these GTC shall refer to any function that was neither demanded by FFT, nor offered by the Contractor with a specific description of the function and its consequences and that was also not accepted in particular by FFT.
5. If the Contractor gains knowledge of an incident that involves a violation of Information Security (e.g. security gaps, Data losses, disruptive incidents, security threats, attack by harmful software, Data misuse), especially an unauthorized access to FFT Data (e.g. Data leak or cyberattack), or if there are indications for the Contractor that justify the suspicion of such an incident given a reasonable evaluation, the Contractor shall without undue delay and free of charge for FFT
  - a) inform FFT thereof,
  - b) take all necessary measures to clarify the facts of the matter and to limit damages and to support FFT therewith,
  - c) if the violation of Information Security causes a disruption of the Service Provision, a reduction of business efficiency, or a loss of Data, support FFT with the recovery of the Data and
  - d) upon FFT's request, provide a security report for a prescribed observation period. Essential contents of such a report are especially the results of security inspections, identified Information Security risks, as well as identified Information Security incidents and their treatment.
6. If the Contractor is obliged to provide proof of a particular level of Information Security according to § 22 sec. 2, the Contractor shall
  - a) advise FFT of a central contact person for Information Security,
  - b) permit FFT upon request to convince itself of the compliance with Information Security and the agreed guidelines on Data protection and security ("Audits"). The Contractor shall tolerate such Audits by FFT and provide contributions such as information, as far as it is necessary for the Audit. FFT may also convince itself of the compliance with the agreed technical and organizational measures within the business premises of the Contractor including the IT systems after timely announcement during customary business hours and, as far as possible and reasonable, without disturbance of the business procedures. FFT is authorized to let an external qualified partner that is contractually bound to confidentiality towards third parties conduct such Audits. FFT's statutory rights of control and information are neither limited nor excluded by this provision.

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7. The Contractor shall ensure that all and any of its subcontractors are contractually bound in an appropriate manner to comply with the terms of this § 22 ("Information Security").
  8. The Contractor guarantees the exclusive use of the hard- and software accepted by the Principal and properly licensed. Prior to each connection to an FFT network, the Contractor has to check its own hardware for the presence of improperly licensed software or other malware and document the result. The results of these tests shall be kept for a period of 5 years and made available upon request by FFT. In case of any violations with the terms of this § 22 sec. 8, FFT is entitled to terminate the existing contracts extraordinarily, without notice for good cause and to demand compensation of damages. In addition, the contractor shall indemnify FFT against any claims by third parties asserted against FFT resulting from an infringement of the Contractor or one of its subcontractors against the provisions of this § 22 sec. 8.

## § 23 Other Provisions

1. The place of performance for the services and deliveries appertaining to each particular individual contract is to be the Principal's head office, or office of the subsidiary placing the order, provided no other place of performance has been stipulated in the individual contract.
2. Should any provision or essential part of the contract or of these General Terms and Conditions of Purchase be held invalid, either in its entirety or in part, or the contract or these General Terms and Conditions of Purchase prove to be incomplete, this will not affect the validity of the remaining provisions of the contract or these General Terms and Provisions of Purchase. Any invalid provision is to be replaced by one which corresponds to or comes closest in spirit and purpose to that of the invalid provision. Any other gaps are to be made good as the parties see fit.
3. The exclusive place of jurisdiction for any legal disputes arising from or in connection with a contract is to be - to the extent permitted by law - the locally competent court at the location of the head office of the Principal.
4. Exclusively the laws of the Federal Republic of Germany shall apply excluding the UN Convention on Contracts for the International Sale of Goods (CISG) and the conflict rules of international private law.