

General Terms of Sale and Delivery (AGB)



Sec. 1 General – Scope of Validity

- (1) The present General Terms of Sale (“AGB“) govern the sale of goods, in particular of filter elements, pressure vessels and accessories, sensors and sensor components by FAUDI Aviation GmbH (“FAUDI Aviation“).
- (2) The present Terms of Sales apply at the exclusion of any other. Possibly contradictory terms or terms of sale of the Customer deviating from the present Terms become part of the contract only if their contents are in agreement with the present Terms or when explicitly acknowledged by FAUDI Aviation in writing. This also applies when services are provided by FAUDI Aviation without reservation in the knowledge of contradictory or deviating terms of the Customer.
- (3) As per Sec. 1 of the present terms of business, in a permanent commercial relationship between FAUDI Aviation and the Customer, the present Terms also apply to all future contracts on corresponding deliveries and services.

Sec. 2 Offer – Contract Conclusion

- (1) Offers of FAUDI Aviation are non-binding and without obligation. A contract between the Customer and FAUDI Aviation is created by an order of the Customer and its subsequent acceptance by FAUDI Aviation. The order of the Customer represents a legally binding offer. FAUDI Aviation will declare the acceptance of an order within 14 days from its receipt, either in writing or by making delivery to the Customer.
- (2) Contract conclusion is subject to the proviso of the correct and timely delivery to FAUDI Aviation itself.

Sec. 3 Prices and Payment Terms

- (1) Unless agreed otherwise, all prices are quoted in EURO plus currently applicable VAT in the statutory amount and apply “ex works” (EXW in the sense of the 2010 Incoterms), i.e. also exclusive of packaging materials, delivery and insurance. “Ex works“ refers to the location of FAUDI Aviation at Scharnhorststraße 7B in 35260 Stadtallendorf. All taxes, customs duties and public charges, e.g. for export, transit, import and other permits, are likewise for account of the Customer.
- (2) Unless agreed otherwise, deliveries are made on presentation of invoice.
- (3) Invoices are due as of the date of invoice and must be paid (without deduction) within 30 days from date of invoice.

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- (4) Default is governed by the applicable legal provisions.

Sec. 4 Delivery and Services

- (1) If not agreed otherwise, when designated by a delivery date and not a final date, delivery periods start to run as of the date of contract conclusion. They are considered met if the goods have left the premises of FAUDI Aviation on their maturity or when FAUDI Aviation has notified shipping readiness. The delivery period is subject to the proviso of correct and timely delivery to FAUDI Aviation itself.
- (2) If not agreed otherwise, FAUDI Aviation shall select the type of packaging and, when delivery was agreed in departure from the present Terms, select the delivery method at its reasonable discretion.
- (3) When freight-paid delivery was agreed, the risk passes to the Customer with the handover of the goods to the forwarder. With shipping delays are attributable to the Customer, the risk passes to the Customer already at the time of picking the goods for shipment and the notification of shipping readiness.
- (4) If delivery is delayed for reasons attributable solely or largely to the Customer or when neither the Customer nor FAUDI Aviation is at fault, the delivery period shall be extended for a period of time corresponding to the circumstances plus an adequate lead time. The Customer shall be notified accordingly.
- (5) FAUDI Aviation is entitled to make partial delivery to a reasonable extent.
- (6) The Customer is entitled to return packaging materials to FAUDI Aviation at the point of handover of the goods. The right to return exists when the packaging materials are handed over promptly on handover of the goods or for pickup at a subsequent delivery. A separate charge is levied for the transport of packaging materials. The Customer may also return the packaging materials to the warehouse of FAUDI Aviation at customary business hours for his own account. Returned packaging materials must be clean, free from foreign matter and broken down by different material. Otherwise, FAUDI Aviation is entitled to charge the costs for their disposal.

Sec. 5 Obligations of Customer – Customer's Cooperation

- (1) The Customer is obligated to adequately cooperate over the supply of the services.

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- (2) The Customer must submit to FAUDI Aviation in good time all records, documents and information (hereafter “documents”) required for contract performance in full, unrequestedly and free of charge. FAUDI Aviation is not required to verify the accuracy and completeness of the documents submitted by the Customer.
- (3) Documents must be supplied in a commonly used format.
- (4) The Customer shall supply his cooperation services free of charge.
- (5) If the Customer fails to supply his cooperation services or fails to do so at contractually agreed dates, the contractually agreed dates for the supply of services by FAUDI Aviation shall be duly extended. The respective extension is a function of the duration of the non-contractual lack of cooperation by the Customer plus an adequate lead time. For cooperation services of the Customer without which the supply of services by FAUDI Aviation is impossible or rendered substantially more difficult, FAUDI Aviation is entitled to set an adequate period for supplementary performance by the Customer. If this period expires fruitlessly, FAUDI Aviation is entitled to rescind the contract.

Sec. 6 Warranty

- (1) If the Customer fails to a claim a defect in good time, claims on account of that defect shall be excluded except if FAUDI Aviation has maliciously concealed the defect or assumed a corresponding warranty.
- (2) If not agreed otherwise, FAUDI Aviation does not warrant that the goods meet particular requirements of the Customer or are suitable for the particular type of use intended by the Customer.
- (3) Title and quality defects shall be remedied by FAUDI Aviation within a reasonable period (supplementary performance). At the choice of FAUDI Aviation, this may be either by remedying the defect (reworking) or by delivery of flawless goods (replacement delivery). If supplementary performance fails, is deemed unreasonable to the Customer or turned down by FAUDI Aviation or if for other reasons this appears justified in the interest of both Parties, the Customer is entitled to his full statutory rights. There is no right to contract rescission, however, when the defect is merely minor.
- (4) The responsibility of FAUDI Aviation lapses if the Customer modifies the goods himself or has a third party do so without the consent of FAUDI Aviation except if it can be demonstrated that the defects in question were not caused by such modifications in whole or in part and that supplementary performance is not rendered more difficult thereby.
- (5) The provisions of Sec. 478 BGB remain unaffected.

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Sec. 7 Liability

- (1) FAUDI Aviation is liable for compensation as per the statutory provisions for injury to life and limb and for damage under the Product Liability Act.
- (2) For other damage, FAUDI Aviation is liable except if resulting from a warranty assumed by FAUDI Aviation, in line with the following provisions.
- (3) Under the statutory provisions, FAUDI Aviation is liable for damage caused by malicious conduct as well as for damage from premeditation or gross negligence on part of FAUDI Aviation, its legal representatives or executives.
- (4) The liability of FAUDI Aviation for damage is limited to the contract-typical amount of foreseeable damage, as follows:
 - for damage due to slight negligence of cardinal contract obligations or of duties the fulfilment of which makes the orderly performance of the contract possible in the first place and which the contract partner can routinely expect to be met (cardinal contract obligations)
 - as well as for damage caused by premeditation or gross negligence by ordinary vicarious agents of FAUDI Aviation.
- (5) In all other respects, any liability of FAUDI Aviation for damage caused by slight negligence is excluded.
- (6) Irrespective of the foregoing, contributory negligence of the Customer – in particular the inadequate supply of cooperation or a breach of other contract obligations – reduces the amount of possible compensation claims.
- (7) The Customer must notify FAUDI Aviation promptly in writing of any damage in the sense of the above liability provisions or have them recorded by FAUDI Aviation to ensure that FAUDI Aviation is informed as early as possible and able to limit any damage, possibly in conjunction with the Customer.
- (8) Exclusions and limitations of liability also apply to the personal liability of the management of FAUDI Aviation, its legal representatives, employees and vicarious agents.

Sec. 8 Time-Barred Limitations

- (1) In departure from Sec. 438 Subsec. 1 No. 3 BGB, the general time-barred limit for claims arising out of title and quality defects is one year from date of delivery. Any liability for premeditation is subject to the statutory period.

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When acceptance was agreed, time-barred limitation starts on the date of acceptance.

- (2) If, however, the product involves an object customarily used in construction and which is the origin of a defect (construction material), according to the legal provisions, the time-barred limitation is 5 years from delivery (Sec. 438 Subsec. 1 No. 2 BGB). The separate statutory provisions on time-barred limit for physical surrender claims of third parties (Sec. 438 Subsec. 1 No.1 BGB), malicious conduct on part of FAUDI Aviation (Sec. 438 Subsec. 3 BGB) and for claims involving legal recourse of suppliers on delivery to the final consumer (Sec. 479 BGB) also remain unaffected.
- (3) The above limitation periods of the right of purchase also apply to non-contractual compensation claims of the Customer residing in a quality defect except when in a given case the application of the regular statutory limitation period would result in a shorter limitation period (Secs. 195, 199 BGB). Compensation claims of the Customer
 - a) for premeditation and gross negligence of FAUDI Aviation – irrespective of their legal reason -
 - b) for simple negligence for damage resulting from injury to life, limb or health as well as
 - c) under the Product Liability Act

lapse on expiry of the statutory limitation periods.

Sec. 9 Reservation of Title

- (1) Up to the fulfilment of all claims (including all payment demands on current account basis), FAUDI Aviation retains ownership of the goods resulting from contracts concluded simultaneously or subsequently with the Customer during their ongoing business relationship, FAUDI Aviation assigns the ownership of reserved goods and associated claims to the Customer whenever the attainable proceeds of the claim exceeds its amount by 10% whereby FAUDI Aviation is entitled to select the reserved goods to be released at its discretion.
- (2) If the Customer is in breach of contract – in particular if the compensation is not paid by the Customer in full – FAUDI Aviation is entitled, after the fruitless expiry of an adequate grace period granted – to rescind the contract and to demand the surrender of the reserved goods. An attachment by FAUDI Aviation of reserved goods likewise represents a contract rescission.
- (3) The Customer must treat reserved goods with due care. He must furthermore

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adequately insure them for his own account at their procurement value against damage from fire, water and theft. When maintenance and inspection works are required, the Customer must perform or have them performed in good time and for his own account.

- (4) When a third party accesses the reserved goods, the Customer must point out the ownership of FAUDI Aviation and inform FAUDI Aviation thereof promptly. The Customer shall bear all costs required to suspend access and to procure the reserved goods if these cannot be recovered from a third party (intervention costs). The Customer may not pledge reserved goods or use them as collateral.
- (5) The Customer is entitled to sell, process, irretrievably blend or amalgamate the goods with other goods in the ordinary course of business. FAUDI Aviation may revoke this authorization only if the Customer is in default of payment or when FAUDI Aviation has rescinded the contract.
- (6) The Customer assigns to FAUDI Aviation already at this time all ancillary rights from a resale held by him against the buyer. When reserved goods are resold together with other goods not subject to reservation of title by FAUDI Aviation, the claim of the Customer against his buyer is considered assigned to FAUDI Aviation in the amount of the price agreed between the Customer and FAUDI Aviation. The same shall apply to all claims taking the place of the reserved goods or otherwise associated with them as e.g. insurance claims or claims due to unauthorized acts in the event of loss or destruction.

If a Customer's claim from the resale of reserved goods is added to the current account arrangement with his buyer, the confirmed net balance shall be assigned to FAUDI Aviation in the corresponding amount already at this time except when the confirmed balance is again re-posted to their current account. The Customer assigns to FAUDI Aviation already at this time the final balance between him and his buyer (the so-called "causal balance") on termination of their current account arrangement. FAUDI Aviation accepts this assignment.

- (7) FAUDI Aviation revocably authorizes the Customer to collect claims in his own name and account also after an assignment. FAUDI Aviation may revoke this authority only if the Customer is in default of payment, an application for the opening of insolvency proceedings has been filed, other reasons to question the contract performance of the Customer exist or if FAUDI Aviation has rescinded the contract. The authority of FAUDI Aviation to collect claimed payments directly remains unaffected. FAUDI Aviation undertakes, however, not to do so as long as the Customer is not in default of payment, no application for the opening of insolvency proceedings has been filed, no other reasons exist to question the contract performance of the Customer and provided FAUDI Aviation has not rescinded the contract.

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FAUDI Aviation may demand from the Customer that the assigned claims and the debtor be announced, all information required for collection be supplied, the pertaining documents be handed over and that debtors be informed of the assignment.

The Customer may not assign such claims in order to collect them by way of factoring except if the factor is irrevocably obligated to provide the counterperformance directly to FAUDI Aviation as long as the latter has pending claims against the Customer.

- (8) The processing of the reserved goods by the Customer is at all times performed on behalf of FAUDI Aviation. If the reserved goods are processed together with other goods not owned by FAUDI Aviation, FAUDI Aviation thereby acquires co-ownership in the new goods in the ratio of the value of the reserved goods (final invoice amount including VAT) to *[the value of]* the other processed goods at the time of processing. In all other respects, new goods resulting from the processing shall be treated equal to reserved goods.

When reserved goods are irretrievably blended or amalgamated with other goods not owned by FAUDI Aviation, FAUDI Aviation acquires co-ownership of the new product in a ratio of the value of the reserved goods (final invoice amount including VAT) to *[the value of]* the other amalgamated or blended goods at the time of their amalgamation or blending. If reserved goods are amalgamated or blended in such a way that the product of the Customer may be considered the main component, the Customer and FAUDI Aviation agree already at this time that the prorated share in the co-owned goods is assigned by the Customer to FAUDI Aviation. Sole or shared ownership of a product shall be duly safeguarded by the Customer on behalf of FAUDI Aviation.

- (9) The Customer is obligated to treat reserved goods with due care.

Sec. 10 Offsetting – Retention– Assignment

- (1) FAUDI Aviation is entitled to the rights of offset and retention to the extent permitted by law.
- (2) The Customer may offset claims of his own or assert a right of retention only when his demands were determined with legal finality in a court of law, are undisputed or acknowledged. The Customer is also entitled to offset claims of his own or to assert a right of retention if the Customer claims a quality defect or raises a counterclaim under the same contractual relationship.
- (3) The assignment of claims against FAUDI Aviation is excluded. Sec. 354a HGB shall remain unaffected.

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Sec. 11 Places of Jurisdiction and Performance – Legal Forum – General

- (1) The place of jurisdiction for all disputes, claims and obligations arising out of and in connection with contracts concluded on the basis of these Terms is Marburg, Germany. FAUDI Aviation is, however, entitled to institute legal proceedings against the Customer also at the seat of the latter.
- (2) The present Terms and all agreements concluded on their basis are subject to the laws of the Federal Republic of Germany at the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna CISG Treaty).
- (3) Unless agreed otherwise, the place of performance is Stadtallendorf, Germany.
- (4) All agreements entered into between FAUDI Aviation and the Customer and bearing on the performance of this Agreement are given in writing herein.
- (5) Notes on the applicability of legal provisions are only explanatory in nature. The relevant legal provisions apply also in the absence of any explanation unless directly modified or explicitly excluded by the present Terms.
- (6) Should individual provisions of the present Terms be ineffective or infeasible or become so after contract conclusion, the validity of the remainder of the Agreement shall not be affected. An ineffective or infeasible provision shall be replaced with an effective and feasible one which in terms of its economic effect comes closest to what the Parties had intended with the ineffective or infeasible provision. This stipulation shall also apply in the event of an omission in the contract body.

Stadtallendorf, January 2019

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