

General Terms and Conditions of Purchase

Freiberger Compound Materials GmbH (FCM)

Revision: 2.1

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1. Scope of Application

- 1.1. The following General Terms and Conditions of Purchase shall apply exclusively to all orders of Freiberger Compound Materials GmbH, hereinafter referred to as FCM. Their exclusive validity shall be recognised by the supplier on conclusion of the contract. The following terms and conditions shall apply to all business relations between FCM and the supplier, even if their validity is not explicitly agreed. Other conditions of the supplier conflicting with or deviating from the following General Terms and Conditions of Purchase shall not be part of the contract, even if FCM does not explicitly object to them and fulfils contractual obligations without any reservation in full knowledge of contradicting, deviating conditions of the supplier.
- 1.2. Any alterations or amendments to the following General Terms and Conditions of Purchase, including this clause, must be made in writing to become effective.

2. Placing of Order

- 2.1. Supplier offers are binding. Orders shall be confirmed in writing. If the supplier does not accept the order within a period of two weeks after receipt, FCM shall be entitled to revocation.
- 2.2. FCM shall reserve ownership and copyright to drawings, sketches and other documents. Drawings, sketches and other documents may only be used for the contractually agreed purpose and shall be added to the delivery as original.
- 2.3. After termination of the business relationship or the respective contract, FCM shall receive upon request and free of charge drawings, models, samples or tools prepared by the supplier specifically for the business with FCM. The supplier is not entitled to use them for other purposes without explicit written consent of FCM.
- 2.4. All provided by FCM materials shall remain FCM's property with the proviso that FCM is considered to be the manufacturer and also retains or directly acquires ownership of the items obtained by processing these materials. The specially marked materials and items shall be insured and kept safe for FCM.

3. Prices

- 3.1. Prices as stated in the order shall be fixed prices. They shall include delivery 'free domicile' according to Incoterms 2010 to the shipping address given in the order, packaging, taxes, customs duties or fees payable pursuant to the applicable law.

4. Payment Terms

- 4.1. The supplier shall be obliged to submit an invoice for each order according to the applicable legal regulations with indication of the respective purchase order number. Invoices issued without purchase order number and not in accordance with the applicable legal regulations shall be considered as not submitted.
- 4.2. FCM shall pay the invoices either within a period of 14 days after receipt with 3% discount or within 60 days after receipt net.
- 4.3. FCM shall be entitled to set off any claim against the supplier with claims of the supplier or to claim right of retention.
- 4.4. Payment of the invoice shall not be construed as a waiver of warranty rights with respect to the delivery and does not exclude a later notice of defects.

5. Delivery

- 5.1. FCM's written order shall be binding for content and scope of the delivery.
- 5.2. The delivery dates stated in the order are fixed dates.
- 5.3. The supplier shall immediately notify FCM in writing of any known or anticipated delay in the performance of its contractual obligations stating reasons for delay, expected duration of the delay and measures taken to overcome the delay.
- 5.4. In case of a delay in delivery, FCM shall be entitled to any statutory rights. After expiry of a grace period of two weeks, FCM shall be entitled to make covering purchases at the supplier's expense or to withdraw from the contract and claim compensation instead of fulfilment.

6. Warranty

- 6.1. The supplier shall guarantee that the delivered item is in accordance with the specifications stated in the purchase order, is made of the agreed material, is free of any defects with regard to material, production or construction according to the state of the art at the time of ordering and of any defects destroying or diminishing suitability for its common or contractually agreed use or its value and that it complies with all statutory and official regulations.
- 6.2. In case of a defective delivery FCM shall be entitled to the statutory warranty rights. At the discretion of FCM, the supplier is obliged to remedy the defect of the delivered item or to deliver a new non-defective item.

- 6.3. For the validity of a complaint, FCM shall not be obliged to comply with the deadlines of §377 HGB (German Commercial Code). FCM shall inform the supplier in writing within a period of two weeks about defects as soon as they may be identified in the course of normal business. In this respect, the supplier shall waive the objection of omitted incoming-goods inspection and delayed complaint as well as of plea of the statute of limitations within a period of 24 months from passing of risk.
- 6.4. In case of imminent danger, special urgency or if the supplier does not respond without delay to FCM's request for subsequent performance, FCM shall be entitled to remedy defects itself at the expense of the supplier.
- 6.5. The warranty period shall be 24 months from transfer of risk. The warranty period for spare parts being replaced in the course of remedy of defects shall recommence with transfer of risk.

7. Liability

- 7.1. In case FCM is held liable by its customer or third parties for product related damages, irrespective of legal reason and regardless whether based on domestic or foreign law, the supplier shall indemnify FCM from such claims on first demand.

8. Proprietary Rights of Third Parties

- 8.1. The supplier shall guarantee that proprietary rights of third parties are not infringed by the delivery or use of the delivered item.
- 8.2. Insofar as FCM is held liable from third parties for unlawful use of the delivered item, the supplier shall indemnify FCM from claims of third parties on first demand, unless the supplier can prove absence of fault on its part.

9. Retention of Title

- 9.1. FCM shall not recognize any extended or prolonged retention of title. A simple reservation of ownership shall only be recognized, if FCM is allowed to sell, process or mix the delivered item in the ordinary course of business.

10. Advertising Ban

- 10.1. No reference shall be made to the terms and conditions of business with FCM, also not for advertising purposes, without prior explicit written approval of FCM.

11. Place of Performance and Jurisdiction

- 11.1. Place of performance for all claims from the contract concluded between FCM and the supplier shall be the registered office of FCM in Freiberg.

- 11.2. Exclusive jurisdiction for all disputes arising from or in connection with the contract shall be Chemnitz. Regardless of this jurisdiction agreement, FCM shall be entitled to take action against the supplier also at the supplier's registered office.
- 11.3. The contractual relationship is governed by the laws of the Federal Republic of Germany. The uniform UN Convention on Contracts for the International Sale of Goods shall not apply.

12. Severability Clause

- 12.1. If any provision of this contract is or becomes invalid in full or in part, this shall not affect the remaining clauses of the contract. This will also apply if a gap in the contract becomes apparent. A fully or partly ineffective provision shall be replaced and a gap in the contract shall be filled by an appropriate provision which as far as legally possible comes closest to what the contracting parties intended or would have intended in accordance with the spirit and purpose of this contract if they had considered this matter.