

General Conditions of Sale and Delivery (GTC)

1) General information:

1.1. The company FUCHS AUSTRIA Schmierstoffe GmbH (hereinafter referred to as “the Seller”) only concludes agreements in accordance with these General Sales and Delivery Terms and the application of these terms is expressly agreed to for all legal transactions between this company and its contractual partner (hereinafter referred to as “the Purchaser”), including all supplementary and subsequent orders. The version that is valid at the time when the respective contract is concluded shall be authoritative. If the application of Incoterms 2020 is agreed to separately for cross-border trade, these shall only be valid if they do not contradict these General Sales and Delivery Terms or any separate agreements.

1.2. General terms and conditions of the Purchaser and any other references to commercial documents of the Purchaser which should form part of the agreement shall have no validity and are expressly contradicted.

1.3. Amendments or additions to the agreement or to these General Sales and Delivery Terms must be effected in written form in order to be legally valid, unless the Purchaser is a consumer for the purposes of the KSchG (Consumer Protection Law); this need for written form can only be waived in writing.

2) Offers and order placement:

2.1. Offers made by the Seller are non-binding and subject to change. The binding purchase agreement (and also any follow-up agreement) shall only materialise after the order has been confirmed in writing by the Seller, provided that the Seller is not a consumer for the purposes of the KSchG.

3) Liability:

3.1. The Seller shall not be liable for damage to items caused merely by slight negligence on the part of the Seller or its vicarious agents, provided that none of the main contractual obligations are affected hereby. Liability in accordance with the Product Liability Act shall remain unaffected. Provided that the matter is not a consumer transaction, liability for indirect and consequential damage is excluded.

3.2. Provided that the matter is not a consumer transaction and with the exception of claims arising from the Product Liability Act or in cases involving intent, damage claims must be brought to court within 1 year of the injured party discovering or culpably failing to discover the damage.

4) Delivery, transfer of risk, discovery of defects:

4.1. The stated delivery times are, unless the customer is a consumer for the purposes of the Consumer Protection Law, or unless the binding nature of the delivery time in the corporate business was expressly agreed to in writing, non-binding indications.

4.2. The relevant point in time for the transfer of risk to the customer is – in the case of sales shipments (including in cases where carriage paid or CIP delivery has been agreed on) and provided that the matter does not concern a consumer transaction – always the point in time of handover of the agreed goods to the transport company.

5) Packaging:

5.1. Empty containers and other packaging material must be disposed of by the Purchaser at its own expense.

5.2. Returnable containers shall remain the property of the Seller and will be provided free of charge for the duration of 90 days after the agreed delivery day. Any other use is not permitted and returnable containers must be returned to the Seller's warehouse including screw fittings and spigots, completely emptied and carriage paid, provided that no other agreement has been reached.

The Purchaser shall be liable for culpable damage to these as well as for returnable containers not being returned on time and in cases where the return of the returnable containers is not possible due to them having been lost, for example, the Purchaser shall be obliged to pay the replacement price.

5.3. Containers belonging to the Purchaser (including tank wagons) must be delivered to the Seller in a clean and ready to fill condition. In cases of delivery in containers belonging to the Purchaser, the Seller shall not be obliged to check the containers for their suitability or cleanliness and their use shall take place at the risk of the Purchaser. Liability of the Seller for contamination of the goods as a result of unclean containers being provided is thus excluded.

6) Warranty:

6.1. Provided that the matter does not concern a consumer transaction, the Purchaser must notify the Seller in writing of any defects of any kind, including any incorrect deliveries or quantity errors, within a reasonable period of time after receiving the goods or, in the case of defects which first become visible later, after they become recognisable and will otherwise lose its warranty claims, its entitlement to compensation for damage, and its right to contest or amend the agreement due to a mistake regarding the absence of defects.

6.2. The Purchaser, provided that the matter does not concern a consumer transaction, also undertakes to leave the faulty goods in the original packaging (provided that the defect does not first become apparent in the course of use), to store them at the place at which the defect was discovered, i.e. at the goods' destination, and to give the Seller the opportunity to check the defects complained about within 8 days of the complaint being submitted, and to take a sample in situ. The Purchaser will otherwise lose its warranty claims.

6.3. If a warranty claim exists, the Seller – provided that the matter does not concern a consumer transaction – shall be entitled to choose the primary warranty remedy (improvement, replacement). In the event, that this is impossible or unreasonable, the Purchaser shall be entitled to choose between a price reduction and conversion.

7) Prices:

7.1. The purchase prices are quoted exclusive of VAT at the legally applicable rate (currently 20%) and, unless expressly agreed otherwise, exclusive of packaging and transport costs from the Seller's place of business in 5303

Thalgau, Breitwies 22. Neither does the purchase price include any insurance.

8) Payment:

8.1. The agreed purchase price is, unless agreed otherwise, due for payment within 14 days after invoicing with no discount. If payment by instalments has been agreed to, default shall result if a payment deadline is missed, with the effect that the entire outstanding amount owed shall be due for payment immediately.

8.2. Payments shall only have the effect of discharging the debt if they are made to an account stated on the Seller's business papers or to a person who – provided that the matter does not concern a consumer transaction – has been granted the power to collect in writing.

8.3. If the matter does not concern a consumer transaction, offsetting against claims of the Seller with counterclaims, whatever their nature, shall be excluded along with the exercising of a right of retention. Consumers can only discharge their liabilities in the event of the Seller's inability to pay or with those counterclaims which are legally connected with the consumer's liability, which have been legally established in court, or which have been acknowledged by the Seller.

8.4. The place of payment shall always be 5303 Thalgau.

9) Retention of title

9.1. The Seller shall retain full ownership of the goods until full payment is received. Resale before full payment is received is only permitted, if this was announced to the Seller in good time beforehand stating the name of the company and the exact (business) address of the secondary buyer and if the Seller has agreed to the sale. This shall also apply in cases of pledging and transfer by way of security. In the event of agreement, the Purchaser shall already assign the claim to the purchase price to the Seller in advance thereby securing its claim to the purchase price and the Purchaser shall be entitled to inform the secondary buyer of the assignment upon conclusion of the purchase agreement at the latest. Furthermore, the Purchaser must provide the Seller with proof that it has informed the secondary buyer and add an official comment with the date in its accounts for every assigned claim.

9.2. In the event of delay, the Seller shall be entitled to assert its rights resulting from the retention of title. It is agreed that the assertion of the retention of title shall not result in withdrawal from the agreement unless the Seller expressly declares its withdrawal from the agreement.

9.3. In the event of the Purchaser processing, mixing or combining the item under retention of title with other goods not delivered by the Seller – even if the other part not provided by the Seller is clearly greater – the Seller shall acquire co-ownership to the new item proportional to the value of its share at the time of processing, mixing or combining. No obligations shall arise for the Seller as a result of the processing, mixing or combining and the item must be stored at the Purchaser's expense.

10) Force Majeure

10.1. If an outside event, that is unrelated to the Sellers business and that could not have been prevented even despite of the Sellers proceeding with the greatest reasonably expected care, such as natural events, war, terror, sabotage, labour disputes, lack of raw materials and energy, none and/or insufficient deliveries by suppliers, transport and loading problems, production stoppages, obstructions caused by cyber-attacks, fire and explosion damage or measures taken by the authorities (hereinafter referred to "Force Majeure"), the parties (hereinafter referred to as "Parties") shall, for the duration of such events and within the extent of the effects of such events, be exempt from their duty to provide goods or services. The Parties are obliged to inform one another without undue delay in writing as far as they can be reasonably expected to do so. If the Seller is released from his delivery obligations, he shall reimburse the Purchaser for any prior payments that may have been made.

10.2. If the restrictions caused by Force Majeure last longer than three months, the Seller is – irrespective of his other rights – authorised to withdraw from the contract fully or partially.

11) No-Russia clause:

11.1. The Purchaser must not, directly or indirectly, sell or re-export goods (including technical support or services related to such goods, "Services") to/ for use in in Russia, Belarus, the territories Crimea, Donetsk, Luhansk and any further, if any, self-proclaimed republic on the territory of the Ukraine. In case of violation, the Seller is entitled (i) to terminate the entire or parts of the business relationship with the Purchaser with immediate effect, (ii) to stop any deliveries of goods (including rendering of Services) with immediate effect, and/or (iii) to any other adequate remedies (including, but not limited to, compensation of any damages, losses, and expenses).

12) Law/place of fulfilment/place of jurisdiction/severability clause:

12.1. The place of fulfilment shall be the Seller's place of business in all cases, i.e. 5303 Thalgau, Breitwies 22.

12.2. The legal relationship between the parties shall be governed solely by Austrian law. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded. Any and all disputes arising from or in connection with this agreement shall be settled by the court with jurisdiction for the Seller's place of business.

12.3. Provided that the Purchaser is not a consumer for the purposes of the KSchG and provisions of this agreement / these terms and conditions are or become wholly or partially ineffective due to legal regulations, the other provisions shall remain unchanged and valid. Both contractual parties undertake, in such a case, to replace the ineffective provision with an effective provision which most closely achieves the economic purpose of the ineffective provision.