

GENERAL SOURCING TERMS (GST)



APPLICABILITY

1. Our entire business relationship, namely that of Fural Systeme in Metall GesmbH and its subsidiaries or affiliated enterprises (hereinafter jointly referred to as »Fural«), with our contractors (hereinafter referred to as »Contractor«), including but not limited to purchase orders, inquiries, acknowledgements of orders, calls for delivery or agreements concerning goods of our Contractors (hereinafter referred to as »Goods«) shall exclusively be subject to the following General Terms and Conditions of Purchase (hereinafter referred to as »GST«). Upon acceptance of our purchase order our Contractor acknowledges that these GST are solely binding. It is put on record that from that time the GST shall also apply to all future deliveries, services or offers of our Contractor to us, even if these GST are not agreed separately once again between us and our Contractor. We expressly object to any general terms and conditions of our Contractor which contradict these GST.
2. Any and all oral commitments, side agreements or the like which deviate from these GST or from other written statements made by us, including but not limited to statements made by our staff or agents, shall not be binding on us.
3. It is put on record that we are entitled to rescind any agreements with our Contractor for cause at any time. A cause shall include but not be limited to a situation where our Contractor discontinues his activities or where insolvency proceedings or reorganisation proceedings in court or out of court are opened over his assets or where insolvency proceedings are or were not opened for lack of assets to cover the costs.

PURCHASE ORDER AND CONCLUSION OF CONTRACT

4. Our purchase orders shall be legally binding only if they are made in writing. Any purchase orders made orally or by phone shall not be binding and shall require our written confirmation to be effective. Moreover, amendments to or modifications of purchase orders or side agreements shall be made in writing to be effective.
5. Our Contractor shall acknowledge our purchase orders in writing by a company signature in accordance with the Business Register within three days of the date of the purchase order. An acknowledgement of an order the contents of which differ from our purchase order shall constitute a new offer and must be accepted by us in writing. In this context silence on our part shall in no case be considered as an acceptance of such acknowledgement of order with a differing content. Thus we shall accept no modifications of the terms and conditions stated in our purchase orders and defined by us; in particular, we shall neither accept higher prices than those stated, inter alia, in our purchase orders nor changes of terms of payment or delivery.
6. Performance of the contract by Fural shall be subject to the proviso that no impediments exist due to national or international regulations of foreign trade law and that no embargoes (and/or other sanctions) prevent performance.

DELIVERY

7. With regard to deliveries of Goods, »DDP« (»Delivered Duty Paid«) pursuant to the Incoterms 2010 including packaging shall be deemed agreed between us and our Contractor, unless these GST or our purchase orders, inquiries, acknowledgements of orders, calls for delivery or agreements with our Contractors provide for a different regulation. Delivery of Goods shall always be effected free of all expenses at the cost and risk of our Contractor. Moreover, we shall be entitled not only to change the mode of delivery at any time but also to state a new destination for delivery of the Goods. If, for example, we state no place of destination in our purchase order, our Contractor shall in any case effect delivery to our registered office as the place of destination.
8. Our Contractor shall be obliged to state our purchase order number on his shipping note and delivery note. If he fails to do so our Contractor shall bear the resulting consequences. Moreover, our Contractor shall be obliged to properly insure the shipments against damage of all kinds at his own cost and to present the relevant policies to us at our request.
9. We shall be entitled to determine the mode of packaging and shipping before delivery is made. If we make no such selection, our Contractor shall be obliged to select the mode of shipping and packaging customary in trade which is the one best suited and most beneficial for us.
10. If we are prevented from taking delivery due to circumstances for which we are not responsible, such as business interruptions of any kind, strike lock-out at our plant or impacts of force majeure or pandemic disease we shall be released from all duties to take deliveries from our Contractor. Moreover, in such cases we shall be entitled to rescind the relevant contract with our Contractor with any liability or damages being excluded.
11. Deliveries by instalments and advance deliveries as well as services by instalments with regard to Goods shall require our written consent and shall be described as such. If we expressly exclude or not allow deliveries by instalments in statements of ours, the payment period for all deliveries by instalments shall commence only upon complete delivery of the Goods in accordance with these GST. In the case of early delivery of Goods by our Contractor we shall, in addition, be entitled to deny acceptance at the cost and risk of our Contractor and, in particular, to postpone payment of the invoice in accordance with the originally agreed delivery date.
12. We shall be entitled to charge our Contractor a penalty of one per cent (1%) of the total gross price of our purchase order (hereinafter referred to as »Contractual Penalty«) without having to prove that damage has occurred, for every started week of delay in delivery, including but not be limited to non-delivery or wrong or defective delivery; the Contractor shall be obliged to pay the relevant amount. We reserve the right to claim damages going beyond the Contractual Penalty. This will be up to 1.500 € per commenced production hour in case of a standstill.

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PASSING OF RISK

13. Passing of risk shall be subject to »DDP« («Delivered Duty Paid») of the Incoterms 2010. Unless deviating terms of delivery are agreed between us and our Contractor in a specific case, in the case of doubt the risk shall pass only upon complete delivery of the Goods by our Contractor to the place of destination defined by us.

TERMS OF PAYMENT

14. Invoices issued to us by our Contractor shall be due for payment within sixty days of receipt, provided that we have received the Goods in accordance with our purchase order. If we pay within fourteen days we shall, in the absence of terms of payment more favourable for us, be entitled to deduct a three per cent cash discount from the invoice amount.
15. In the case of a delay in payment we shall only pay the default interest provided for by law. Further claims, such as a claim for higher interest on account of damages, cannot be asserted vis-à-vis us.
16. We shall reimburse costs and expenses incurred by our creditors due to a reminder or collection measures, such as costs of a collection agent, costs of legal counsel, court fees, etc. only if this is provided for by law.
17. All invoices of our Contractor shall be sent to us separately from deliveries and shall state the purchase order number and delivery note number and shall include all related documents and data. In the case of improper invoicing invoices of our Contractor shall be deemed received by us only at the time of rectification.
18. Setting off claims of ours against claims against us shall not be permitted. In the case of defective delivery of Goods by our Contractor we shall be entitled to withhold payment on account of invoices of our Contractor pro rata the value until proper performance in accordance with these GST is effected.
19. Should Contractor conduct works on Fural's factory premises, Contractor shall be obliged to sign and obey an instruction standard form provided by Fural prior to commencing of any such works.

PASSING OF TITLE / PROTECTION OF TITLE / RETENTION OF TITLE

20. Title to Goods delivered to us by our Contractor shall pass to us upon complete payment and, in particular, taking into account Clause 21 of these GST.
21. We expressly reserve title to and/or the copyright in the purchase orders and orders placed by us, including but not limited to drawings, illustrations, calculations, specifications and other documents made available to our Contractor. Without our express written consent our Contractor shall not be entitled to make them accessible or known to third parties or use them himself or allow third parties to do so or reproduce the same. At our request our Contractor shall at any time completely return to us or destroy those documents and any copies thereof.
22. If we process the Goods delivered to us by our Contractor prior to fulfilment of all our duties, our Contractor cannot obtain title or ownership rights to the newly created product.
23. It is put on record that without exception we shall accept no statements of our Contractor or of third parties and that we shall reject any agreements under which our Contractor or a third party retains ownership rights or similar rights of control over or disposal of the Goods. Moreover, it is put on record that extended or renewed retention of title by our Contractor shall not be permitted.

WARRANTY

24. Without exception we shall neither accept statements of nor agreements with our Contractor under which our rights to warranty, damages, liability for defective products (product liability) or similar rights are restricted in the case of defects of any kind of the Goods delivered to us, also with regard to short quantities or wrong Goods. In this context we shall not be obliged to give (immediate) notice of defects. At our request our Contractor shall be obliged to provide us with the documents related to the Goods delivered to us which evidence that the Goods delivered to us are in conformity with the contract as regards quality and quantity (such as test certificates, measurement records, etc.). We shall not be obliged to examine the Goods delivered to us, and our rights to warranty, damages, liability for defective products (product liability) or similar rights shall not be affected thereby and shall remain in full force and effect.
25. Our warranty rights include compensation for all costs and damages caused by the defective products (e.g. internal costs inclusive of overhead costs, cost for deinstallation of defective products and installation of replacements at the place of actual use of defective products, delivery of replacements to the place of actual use of defective products). Place of fulfilment of all warranty related obligations of Contractor shall be the place of actual use of defective products. Additional rights as per applicable law shall remain unaffected.
26. Our Contractor is certified per »ISO 9000 / 9001« and »ISO 14001« (respectively under an »Integrated Management System«). Our Contractor explicitly assures that the goods or services to be delivered by the contractor fully comply with these standards. Fural may relieve the Contractor thereof in writing on an individual basis.
27. Our rights to warranty, damages, liability for defective products (product liability) or similar rights shall expire not earlier than two years after the date from which our product that was manufactured by using Goods delivered to us was delivered to the relevant end customer, but not later than three years after delivery to the agreed place of performance. It is put on record that any applicable longer statutory periods shall not be affected thereby.

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28. We shall be entitled but not obliged to repair defects of any kind in the Goods delivered to us ourselves at the cost of our Contractor, including but not limited to situations where this would otherwise cause a disturbance of our manufacturing process for time reasons. If necessary, we shall be entitled to do so also without notice to our Contractor and also without having to give our Contractor an opportunity to repair the defect. Moreover, these measures include, for example, an accurate item-by-item inspection of the Goods delivered by our Contractor in order to sort out Goods that are not in conformity with the contract. The Contractor shall reimburse to us all costs related thereto.
29. For a minimum period of ten years after delivery of the Goods to us our Contractor shall be obliged at our request and irrespective of any existing claims under warranty, damages, product liability or similar claims, to render follow-up delivery of Goods of the same specification and quality (also in small quantities). If we do not have a right to such services of our Contractor free of charge, such follow-up deliveries shall be subject to the prices originally agreed, however taking into account, inter alia, any currency depreciation or appreciation and increases in productivity achieved by our Contractor.
30. Our products shall meet all prerequisites for putting them into world-wide commerce as required. Therefore our Contractor shall support us in obtaining the certificates necessary therefor (certificates of conformity) in the best possible way. We shall reimburse our Contractor the costs incurred in this connection only if an express written agreement has been concluded before such costs were incurred.
31. Our Contractor shall be obliged to observe, comply with and fulfill, in particular, the requirements of Directive 2011/65/ EC of the European Parliament and of the Council of 08th June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment, Official Journal of the European Union No. L 174/88 of 1st July 2011 (hereinafter »Directive«), and, inter alia Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18th December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No. 793/93 and Commission Regulation (EC) No. 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, Official Journal of the European Union No. L 396/1 dated 30th December 2006 (hereinafter »Regulation«) and/or any future or actual (national) regulations, amendments or rectifications by which this Directive is or has been implemented or amended, and to support us in the best possible way in order for us to be able to fulfill our duties resulting therefrom. This shall also apply to any regulations that may modify, amend or replace the said Directive and/or Regulation.
32. Our Contractor herewith is obliged to ensure, that all currently or in future delivered Goods are in accordance with all conformity regulations and rules of the European Union according to Commission Regulation (EC) No. 735/2008/EC as well as Resolution of EC 738/2008 and are marked with the CE-label. Based on these rules and regulations and the rules and regulations listed in Point 30 above, Contractor shall further be obliged to provide us with all necessary documents regarding delivered Goods to give proof that our Goods are in conformity with all the listed regulations in an adequate, supporting format (whether printed or electronic recording).
33. Our Contractor is obligated to take out and maintain an insurance policy that is sufficient for any of our rights to compensation or for liability in relation to faulty products, product liability or to support and the reimbursement of costs incurred as a result of product recalls or similar rights. Our Contractor relinquishes his rights to payment and coverage provided by any insurance policy up to the amount of the claims held by us against our Contractor to secure our claims upon the conclusion of a specific delivery agreement with Fural and at the latest upon the Goods being delivered to us. Our Contractor is also obligated to inform his insurers about this in writing.

PROPRIETARY RIGHTS

34. Our Contractor guarantees and warrants that all Goods are free from proprietary rights of third parties and, in particular, that patents, licences or other proprietary rights of third parties will not be infringed by delivery or use of the Goods.
35. Our Contractor shall be liable for all claims arising in the course of use of the Goods in accordance with the contract due to an infringement of proprietary rights and application for registration of proprietary rights of third parties. Such claim shall exist independent of fault.
36. Our Contractor shall be obliged to indemnify and hold harmless us and our customers from and against any and all claims resulting from an infringement of proprietary rights of third parties; in particular, our Contractor shall be obliged to bear any licence fees payable in this context.
37. Our Contractor shall be obliged to inform us of any risks with regard to an infringement of proprietary rights immediately after they become known in order to defend and/or minimise third-party claims, if any.

DATA PROTECTION

38. The Contractor has read the Fural Data Privacy Policy and expressly agrees that Fural may process
- Personal data that is provided by the Contractor in the course of the initiation, processing and fulfilment of the contract as well as for the further maintenance of the contractual relationship; and
 - Additional data to verify the Contractor's authority and economic and technical capability (also by obtaining creditworthiness information, company register extracts, trade register extracts from authorised credit agencies, creditor protection associations and operators of public registers as well as clearance certificates from the tax office and the responsible social insurance carriers) for purposes of contract initiation, processing and fulfilment.
39. The Contractor expressly consents, that the data referred to in section 38, as well as additional data that is disclosed during the course of the contractual relationship, may be processed by Fural for purposes beyond the fulfilment of the contract with the consent of the Contractor

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40. The processing of personal data may also include sharing data with Fural partners that maintain a branch in a country that is not within the European Union. Fural will ensure for such third parties outside the Union that personal data is collected, processed or used by third parties only in accordance with Regulation [EU] 2016/679 of the European Parliament and of the Council of 27 April 2016, that an adequate level of protection exists or that a contractual agreement with standard data protection clauses is concluded.
41. The Contractor is entitled to withdraw this consent at any time, however this does not affect the lawfulness of personal data processed prior to the customer's withdrawal of consent.

SOCIAL STANDARDS

42. Our Contractor agrees to maintain a social standard and in particular agrees to
- never make use of, support or facilitate child labour or forced labour, and to make sure his suppliers do not – whether directly or indirectly – make use of or support child labour or forced labour.
 - refrain from any form of discrimination with regard to employment, access to educational or training measures, promotion, pension or dismissal based on race, caste, national origin, religion, physical disability, gender, sexual orientation, age, political commitment or union membership.
 - respect the right of employees to create unions and/or join them and collective bargaining, and/or if local laws deny this right, our Contractor is required to organise alternative possibilities for the co-determination of employees.
 - respect provisions applicable to him and his production sites with regard to occupational safety and the locally applicable labour law and to ensure that his suppliers- whether direct or indirect -also meet them.
 - refrain from using disciplinary sanctions in the form of mental or physical coercion or verbal abuse and to always show respect to the physical and emotional integrity of all employees.
 - determine working hours for employees in accordance with the national laws and industrial standards. A weekly working time of 48 hours cannot be exceeded and one free day a week must be guaranteed.
 - remunerate his employees in accordance with the legal or industry-specific minimum wage and to ensure that this suppliers also pay their employees according to the legal or industry-specific minimum wage. This remuneration shall be sufficient to ensure the minimum needs of employees, with some left over for them to spend freely. By request of Fural, our Contractor must provide records of the working hours and remuneration of his employees to Fural.
 - establish a management system which ensures the implementation, compliance with and control of best practice guidelines. It must inter alia act as a documentation of the status quo in the implementation process, so that changes can be detected at any time and this information can also be made available to all interest groups.
43. Our Contractor is committed to provide Fural with a written confirmation on the compliance with the aforementioned obligations at any time at the request of Fural.

FINAL PROVISIONS

44. Our Contractor shall not be entitled to transfer to third parties in whole or in part rights or duties, including but not limited to purchase orders, inquiries, acknowledgements of orders or calls for delivery and/or under these GST or under an agreement with us without our express written consent.
45. If any provisions of these GST are or become ineffective or unenforceable in whole or in part, the validity of the remaining provisions of these GST shall not be affected. Such provision shall be replaced by a valid provision which comes as close as possible to the purpose of these GST.
46. The court having subject-matter jurisdiction and local jurisdiction over the place of our registered office shall have exclusive jurisdiction over all disputes out of or in connection with agreements concluded between us and our Contractor. However, we reserve the right to resort to a different place of jurisdiction provided by law at our option with regard to claims against our Contractor.
47. If the ruling of a court as per section 46 above would not be enforceable in the country of residence of Contractor or in any country, where substantial assets of Contractor are located, then Contractor irrevocably submits – in lieu of Section 41 and within the sole discretion of Fural – to the jurisdiction of an arbitral tribunal constituted under the Austrian Federal Economic Chamber in Vienna's rules of arbitration (Vienna Rules).
48. Our Contractor shall fulfil agreements concluded with us at our registered office, also taking into account Clause 7 of these GST.
49. Contractor shall comply with all applicable laws, rules and regulations when acting for or on behalf of Fural. Contractors of Fural must not engage directly or indirectly in any form of bribery or make or accept any facilitation payments while conducting business with Fural or on Fural's behalf.
50. Our compliance regulations are binding for our employees and external procurement consultants. Our Contractor is obligated to fulfill our requirement for transparency and supports our 4-eyes-principle in procurement. Every attempt of illegal or immoral advantageous promises to our employees or external procurement consultants gives us – regardless of any other legal consequences - the right to withdraw from the contract.
51. The law applicable at our registered office shall apply and the conflict of laws rules of private international law and UN Sales Law shall be excluded.

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