



GENERAL TERMS AND CONDITIONS OF PURCHASE (GTCP of 19.05.2017)

1. Scope

- 1.1. All deliveries and services of F. LIST GERMANY GMBH, Georg-Wulff-Strasse 2, DE-12529 Schoenefeld (hereinafter referred to as F/LIST) are made exclusively on the basis of these General Terms and Conditions of Purchase (hereinafter referred to as "GTCP"). These GTCP shall also apply to all such future orders and transactions between the parties without the need of express reference to these GTCP.
- 1.2. These GTCP apply in their valid version, as amended from time to time. F/LIST informs the supplier of any amendments of these GTCP in due time in advance.
- 1.3. Different, contradicting, additional or supplementary terms and conditions of purchase, in particular terms and conditions of the supplier, shall be deemed as waived and shall not apply even if F/LIST is aware of their existence and even if they have not been explicitly contradicted by F/LIST or if F/LIST accepts or performs services with knowledge and without reservation.
- 1.4. Modifications and additions to these GTCP need to be in written form in order to be legally effective. The transmission by fax shall meet the requirement of written form. Any deviation from this written form requirement must also be in written form.

2. Conclusion of an agreement

- 2.1. In order to be legally effective, each individual order by F/LIST needs to be in written form. Electronic transmission shall meet the requirement of written form. In the event of a deviation between the written order and the original request or the non binding notification of an order, the written order is deemed to be accepted by the supplier unless the supplier notifies F/LIST about his rejection in writing within one week.
- 2.2. The supplier is bound to his offers to F/LIST for 4 weeks from the date of receipt by F/LIST. Offers from the supplier do not require any particular form in order to be legally effective.
- 2.3. Unless otherwise individually agreed in writing, the order includes all necessary supplementary, support and additional deliveries and services which are covered by the agreed price. These includes installation and assembling, conducting a trial run including the provision of all necessary consumables as operating materials, lubricants and test materials. Additionally, the order includes the required training and the handover of German user manuals and technical documentation.
- 2.4. The supplier is obligated to review all requests, documents, information and orders submitted by F/LIST for uncertainties and incompletions and check whether the object ordered is suitable for the intended use case. The supplier shall immediately inform F/LIST on any recognizable faults or concerns in written form. Additionally, the supplier shall provide F/LIST with references or suggestions for correction or improvement to a reasonable extent within a reasonable period of time and without any additional payment
- 2.5. The acceptance of an offer from the supplier by F/LIST needs to be in written form to be legally effective, an electronic submission is sufficient.
- 2.6. The acceptance of an order by the supplier might be explicit or implied. Also, in case of an existing business relationship between F/LIST and the supplier, the order from F/LIST shall be tacitly accepted by the supplier after one week without any answer by the supplier.
- 2.7. Irrespective of Section 2.6. the supplier is requested to confirm the order in writing. Such written confirmation is not a requirement for the conclusion of the contract. The acceptance of the supplier is determined in Section 2.6.
- 2.8. In the event the confirmation according to Section 2.7 differs from the order, the supplier is obligated to clearly indicate this fact in the order confirmation and point out the modifications. Modifications and subsequent additions by the supplier shall be confirmed in writing by F/LIST in order to become legally effective.
- 2.9. All contracts between the supplier and F/LIST are under the reservation of the approval by the management of F/LIST. As a consequence, F/LIST is free to decline any initiated transaction within a reasonably period of time. These declined transactions shall be deemed as never been concluded in the first place.

3. Intellectual Property Rights

- 3.1. All rights of F/LIST in any works and documents protected by copyright or otherwise, such as drawings, plans (including technical drawings), designs of any kind, know-how and patents are explicitly reserved. Such works, documents, know how, designs of any kind, patents etc shall not be used for own purposes of the supplier and shall not be made available and/or transferred to a third party without the written approval of F/LIST in advance, which needs to be obtained separately in each individual case. In case of doubt, such an approval of F/LIST is not obtained. Besides Section 15 shall apply.

F/LIST

- 3.2. The supplier remains the holder of any rights of use and exploitation on deliveries and services that existed at the point of time of conclusion of the agreement, insofar F/LIST obtains a non-exclusive right of use and exploitation. In the event the supplier or a third party fulfilling F/LIST's order on its behalf creates tools, models, designs, devices, computer programs etc, the sole property rights and all rights including the exclusive right to use and exploit are transferred to F/LIST at receipt of the good or performance of the service. All these rights might be transferred wholly or partly to third parties without approval of the supplier. This includes the right to change, reproduce, distribute or use the tools, models, designs, devices, computer programs etc in any other way and without any limitation. The usage of these tools, models, designs, devices, etc by the supplier for the fulfilment of third party orders is prohibited.

4. Delivery and Performance / Shipment / Acceptance

- 4.1. The delivery date specified on the order of F/LIST is binding and defined as the date of receipt of the goods or performance of the service. It is also defined as the date of acceptance, if this was concluded between the parties according to Section 4.10. Advance delivery or partial delivery need to be accepted by F/LIST in writing in advance. In the case of an excess delivery, which exceeds the ordered quantity, F/LIST shall be entitled to choose to accept the goods or services by payment of the requested amount or to return them at the expense and risk of the supplier.
- 4.2. The supplier guarantees to fulfil all preconditions necessary for the completion of the order, including but not limited the availability of enough qualified personnel, technical facilities, intellectual property rights, know-how etc.
- 4.3. Furthermore, the supplier guarantees to hold all the regulatory or other authorizations, rights or permits, whether they are subject to public or private law, which are necessary for the execution of the order.
- 4.4. F/LIST is entitled to decline acceptance and reject a faulty delivery or service also in the event of a minor defect. Subsequently the supplier is in default in delivery. To the extent the supplier is obligated to provide material tests, test protocols, documents regarding quality or other documents, the delivery is only completed after these documents have been provided.
- 4.5. In the event the supplier is in default in delivery, F/LIST is entitled – without limitation of further claims including but not limited to damages, performance etc. – to withdraw from the contract subject to a reasonable grace period. As a consequence, any costs arising, including potential subsequent costs shall be borne by the supplier. Acceptance of the performance at the place of delivery is essential for the fulfilment of the delivery time, in case the parties agreed on an acceptance according to Section 4.10 or the parties agreed otherwise. Otherwise, the time of delivery or performance is essential.
- 4.6. In the event of Section 4.5. F/LIST is entitled to engage a third party to fulfil the obligations of the supplier and the additional costs arising thereof shall be borne by the supplier.
- 4.7. The delivery takes place according to the "Incoterms 2010" under the delivery conditions and at the destination indicated in F/LIST's order. Unless otherwise individually agreed between the parties or indicated in the order shipment takes place DDP Incoterms 2010 to the business address of F/LIST indicated in Section 1.1. In the exceptional event different delivery conditions are agreed on in writing, the shipment instructions issued by F/LIST must be followed strictly.
- 4.8. Shipment requires package that is suitable to protect the goods from damage resulting of weight that is usual for this kind of transport. F/LIST shall not bear any packaging costs.
- 4.9. Each delivery shall have a delivery note enclosed which includes the order number and the item number from F/LIST. In the event a consignment consists of more than one package, each package shall have enclosed the order data of F/LIST and a packing note. Without the according delivery documents, F/LIST is entitled to refuse the acceptance of the delivery.
- 4.10. In the event the value of the total performance exceeds EUR 35,000 excluding VAT, a formal acceptance procedure including a written protocol might be applied upon request of F/LIST.
- 4.11. The supplier guarantees that he and all of its subcontractors comply with all relevant legal provisions, directives and other mandatory provisions in relation to minimum wages. They guarantee to pay at least the legal or otherwise obligatory minimum wage to all of their employees.

5. Warranty for material defects and defects in title

- 5.1. Any notifications concerning visible damages (including damages in transit and obvious deviations in respect of quantity or identity of the goods) shall be made within a period of two weeks from receipt of the goods and services. Other defect shall be notified to the supplier within a period of two weeks from knowledge of the defect.
- 5.2. The ordered goods and services shall be free of defects and comply with the state-of-the-art. The ordered goods and services shall be free from rights and claims of third parties, in particular also free from third party rights and claims in respect to intellectual property rights. Moreover, the ordered goods and services shall possess the characteristics contractually agreed on and comply with the intended use communicated by F/LIST and meet the requirements of F/LIST.
- 5.3. The warranty period for material defects and defects in title shall be 36 months irrespective of any deviating written agreements concluded in individual cases. This period begins to run with the delivery of the goods or performance of the service and if necessary with acceptance of the goods by F/LIST.
- 5.4. In case a defect arises within 12 months after receipt of the ordered goods and services, it shall be assumed that this defect has been present at the point of time of delivery or performance of the service.

F/LIST

- 5.5. In case the supplier is not complying with his duties in respect to the warranty obligations within an appropriate timeframe as of notification by F/LIST, F/LIST is entitled to remedy the defect on its own or by engaging a third party at the expense of the supplier.
- 5.6. F/LIST is entitled to withhold a retention amounting to 5% of the contract value within the warranty period in order to safeguard its warranty claims arising from this contract. The supplier is entitled to replace the retention by an abstract bank guarantee. It is permitted to provide one single bank guarantee for more than one project. Otherwise all legal claims and rights of F/LIST remain unaffected

6. Cancellation by F/LIST

F/LIST is entitled to cancel the order at any time. As a consequence, F/LIST compensates the supplier for all costs arising out of the cancelled order against presentation of a detailed proof. In the event the goods were produced before the cancellation based on an order including individual requirements and specifications of F/LIST, the supplier is entitled to compensation on the basis of a detailed list containing documented prime costs to the extent no other utilization is possible for the supplier.

7. Withdrawal from the contract

F/LIST is entitled to withdraw from the contract for the following good causes:

- a) In case a court receives an insolvency filing from or against the supplier. The withdrawal must be declared before the insolvency proceedings starts.
- b) In case of a rejection of such insolvency filing by the supplier.
- c) In case of discontinuing payments on a general level by the supplier in absence of the opening of insolvency proceedings.

8. Reporting obligation - Contractual penalty

The supplier is obligated to inform F/LIST immediately in writing of any intended insolvency applications. In case of a violation of this obligation, the supplier must pay EUR 10,000 as a contractual penalty to F/LIST.

9. Prices/Payments

- 9.1. The prices as stated in the order shall apply.
- 9.2. The prices are binding fixed prices (including all costs, fees, taxes and duties) and therefore they are unchangeable until the complete fulfillment of all deliveries and services including the supplementary, support and additional deliveries and services according to Point 2.3. Cost estimates of the supplier shall be deemed as correct and supplier shall guarantee its correctness.
- 9.3. Invoices are due, irrespective of the beginning of the statute of limitation, when the ordered goods or services are fully accepted and in case of a formal acceptance by F/LIST the goods or services are free from defects plus a proper invoice has been issued; also in case of partial delivery. Likewise, the discount period starts after completion of the delivery of the ordered goods or after due performance of the services or the formal acceptance, if applicable, and after a proper invoice has been issued.
- 9.4. Irrespective of different agreements in a specific instance, invoices to F/LIST are due for payment within 30 days after completion of delivery or performance and issuance of a proper invoice. Supplier grants a discount of 3 % for payment within 14 days.
- 9.5. Payments are always deemed to occur on the date the bank account of F/LIST is charged. Payments by cheque are deemed to occur one working day after the cheque was sent by mail by F/LIST.
- 9.6. In case of partial payments (down payments) F/LIST is entitled to withhold 10 % of the total contract value. The payment of partial invoices or requests for down payments shall never be deemed as a (partial) acceptance.

10. Retention of title

From the supplier performed deliveries and services become property of F/LIST upon delivery of performance. Any retention of title claimed by the supplier is not recognized by F/LIST and shall be invalid.

11. Set-off, retention

- 11.1. A set-off against claims of F/LIST or the exercise of a right of retention of the supplier is only valid with judicial determined or from F/LIST accepted counterclaims.
- 11.2. The exercise of a right of retention of the supplier is only valid if the counterclaims are based on the same legal relationship.
- 11.3. Disagreements do not entitle the supplier to withhold due deliveries or services.

12. Invalidity

If any provisions of these GTCP are held to be invalid or unenforceable, this shall not affect the validity or enforceability of the remaining provisions. The invalid provision shall be replaced in such a way that corresponds best to the meaning and economic purpose of the invalid or unenforceable provision and the intention of the parties.

F / LIST

13. Notification

- 13.1. Notifications shall be made in the form stated in these GTCP and shall be directed to the last address that was announced in writing. The transmission by fax or any other form permitted by these GTCPs shall satisfy the written form.
- 13.2. Supplier shall notify F/LIST in writing without undue delay of supplier's changes of business address, otherwise a notice directed to the business address last announced by the supplier shall be deemed to be as received by the supplier for legal purposes. The date of dispatch shall be the relevant date, unless expressly stated otherwise, for a notification to be filed in time.

14. Place of performance/ Place of jurisdiction/ Applicable law/ Period of limitation

- 14.1. The place of performance for all obligations resulting from the business relationship is the seat of F/LIST at DE 12529 Schoenefeld.
- 14.2. Place of jurisdiction for all disputes arising from purchase transactions shall only be the Landgericht Potsdam, Germany. However, F/LIST is also entitled to file a suit against the supplier at the supplier's general place of jurisdiction.
- 14.3. German substantive law shall apply exclusively excluding the UN Convention on the International Sale of Goods (CISG) and the conflict of laws provisions.
- 14.4. All claims of the supplier need to be asserted by legal action within one year after the due date, otherwise the claim is excluded. Relevant for the timeliness is the filing of the document initiating the proceedings by the court.

15. Additional conditions for the work with materials, tools, designs and/or other items which are provided by F/LIST

- 15.1. All materials, substances, tools, designs and/or other items provided by F/LIST to the supplier or by the supplier to a third party after being instructed, remain the sole property of F/LIST. Therefore each disposal limiting the property rights of F/LIST is prohibited. The supplier is at any time obligated to make the property of F/LIST evident to third parties in any possible way. The supplier is obligated to treat such materials, substances, tools, designs and/or other items with care and to store them carefully.
- 15.2. At first request by F/LIST the supplier is obligated, irrespective of other rights or obligations, to hand over provided materials, substances, tools, designs and/or other items including workpieces produced by the supplier. This applies in particular but not limited in case an insolvency proceeding involving the supplier is opened or dismissed due to the unavailability of cost-covering assets or F/LIST's withdrawal from the contract for whatever reasons. The supplier shall not have any right of retention or refusal of service rights to the extent legally permitted.
- 15.3. The supplier shall inform F/LIST on all events regarding the property of F/LIST, including but not limited to pledging, confiscation, third party claims etc in writing immediately. Additionally, the supplier needs to take all judicial or extrajudicial measures on his own cost and risk, which are necessary to prevent infringements of the property right.
- 15.4. Upon request by F/LIST, the first-piece has to be provided to F/LIST for the purpose of inspection, in particular for inspection before acceptance.