

## **General Terms and Conditions of Business Ferrofacta GmbH**

### **I. Area of application**

1. These terms and conditions of business shall apply exclusively to companies, corporate bodies governed by public law or special assets governed by public law as defined by Article 310 (1) BGB (German Civil Code).
2. The terms and conditions of business shall apply to all contracts concluded between Ferrofacta GmbH (hereinafter referred to as Ferrofacta) and the respective concrete contractual partner (hereinafter referred to as customer) regarding the delivery of goods or the provision of services. They shall apply exclusively.
3. The following terms and conditions of business shall also apply to all future business relations between Ferrofacta and the customer even if they are not expressly agreed again.
4. Differing conditions of the customer that we do not expressly acknowledge, shall not be binding for us even if we do not expressly object to them.
5. The following conditions shall also apply if Ferrofacta accepts an order from the buyer without any reservation whilst being aware of conflicting or differing conditions of the buyer.

### **II. Offer / Conclusion of contract**

1. The first development and execution proposal that Ferrofacta makes following an enquiry by the customer (as a rule by submitting a sample or construction documents), shall always be without commitment and subject to confirmation and shall consequently not constitute a legal offer of contract by Ferrofacta. In particular the documents, drawings, indications of weight and dimensions and samples included in this proposal shall only be approximate indications and shall not constitute quality features.
2. Ferrofacta shall not be liable for damages suffered by the customer that are based on an offer without obligation of this kind, unless Ferrofacta acted intentionally or in a grossly negligent manner or if injuries to life, body or health are involved.
3. The customer shall be able to make a legally binding offer of contract to Ferrofacta on the basis of this non-binding proposal. At the very least the offer must be made in text form.
4. If the customer refrains from conclusion of contract, he shall pay to Ferrofacta an expense allowance of 15 % of the total amount likely to be realised that would have been the purchase price following due performance of contract, however no less than € 1,000.00, to compensate for the expenses incurred by Ferrofacta for the preparation of the proposal. The customer shall be entitled to provide proof that Ferrofacta incurred lesser expenses or did not incur any expenses at all. If the customer is able to provide proof of this kind, Ferrofacta shall only be able to demand this lesser amount as compensation for the expenses.
5. The contract shall come into being if Ferrofacta accepts the customer's offer within four weeks. At the very least the declaration of acceptance must be made in text form.

6. Before the first delivery of each and every product Ferrofacta shall arrange for the customer to receive a sample or a construction document with regard to the subject matter of the contract in order to give the customer the opportunity to examine the use of the subject matter in practical surroundings. For quality assurance, the customer shall at least inform Ferrofacta of acceptance in text form. Ferrofacta shall not have to make final delivery before a declaration of acceptance has been issued.

### **III. Delivery**

1. In the absence of another express agreement, which must at least be made in text form, the performance owed by Ferrofacta shall be an obligation to be performed at the debtor's place of business as defined by Article 447 BGB (German Civil Code). This shall apply irrespective of whether the goods are despatched from the place of performance or irrespective of who pays the freight costs.
2. Scheduled delivery dates or terms of delivery shall only then be binding if they are at least in text form and have been expressly agreed in a contract. Bindingly agreed scheduled delivery dates or terms of delivery shall automatically become invalid if the customer fails to comply with his obligations (e.g. payments on account, provision of necessary documents) or expresses subsequent requests for modification (i.e. after conclusion of contract) that change Ferrofacta's obligation to perform. In this case the parties shall be able to agree on a new scheduled delivery date or new terms of delivery. In turn this shall at least be in text form.
3. The term of delivery shall be complied with if the subject matter has been handed over to the person carrying out transport before the term of delivery expires.
4. If the purchaser should be in default of acceptance or if he culpably neglects other obligations to cooperate, Ferrofacta shall be entitled to demand compensation for the damage incurred in this respect including any additional expenses. The right to other claims shall be reserved. Insofar as the above requirements exist, the risk of accidental perishing or accidental deterioration of the item of purchase shall pass to the customer at the point in time he is in default of acceptance or debtor's delay.

### **IV. Passing of risk**

The risk of accidental perishing of the subject matter owed by Ferrofacta shall pass to the customer upon handover of the subject matter to the person carrying out transport, if at the very least something else has not been expressly agreed in text form between Ferrofacta and the customer.

### **V. Prices and payment**

1. If something to the contrary has not been agreed in text form at the very least, the Ferrofacta prices ex factory shall apply exclusive of packaging and VAT. The packaging costs will be invoiced separately. The VAT at the respective valid rate on the invoice date shall be added and shown separately.

2. In the case of changes in the exchange rate or other alterations in delivery price for which Ferrofacta is not responsible, the fee as originally agreed shall be adapted to the respective alteration. This shall also apply to costs that come about on account of requests for modification by the customer that are carried out.
3. If the hot runner designed by Ferrofacta is the subject matter of the contract, payment shall be made within 30 calendar days as from issuing the invoice.
4. In the case of other subject matter of the contract, 30 % of the purchase price shall be due for payment immediately upon conclusion of contract, 40 % immediately after the first delivery (comp. II. 6.) and 30 % upon final delivery of the subject matter of the contract. In each case the customer shall have a payment deadline of 14 days as from notification of the due date by Ferrofacta.
5. The customer shall be in default of payment, also without a reminder from Ferrofacta, if he fails to observe the payment deadlines stated in 2. and 3., i.e. fails to make payment. If he is in default of payment, he shall pay default interest in the amount of 9 percentage points over and above the base lending rate. Ferrofacta reserves the right to make a claim for other damage.
6. Payment of the purchase price shall be made exclusively to one of the Ferrofacta accounts. The deduction of discount shall only be permissible following a special written agreement.

#### **VI. Reservation of title**

1. Ferrofacta reserves title to the delivered item until payment has been made in full for all receivables arising from the delivery contract. This shall also apply to all future deliveries even if Ferrofacta does not expressly refer to this. Ferrofacta shall be entitled to take back the item of sale if the purchaser behaves contrary to contract (e.g. is in default of payment) and Ferrofacta has given the customer a reasonable period of time to make amends. Withdrawal of the item shall constitute cancellation of the contract.
2. As long as ownership has not passed to him, the customer shall be obligated to handle the item of sale with care. He is, in particular, obligated to provide adequate insurance of its value as new against theft and damage by fire and water at his own expense. If maintenance and service work has to be carried out, the customer shall carry out this work in good time and at his own expense.
3. The customer shall be entitled to resell the goods subject to reservation of title in the normal course of business. The customer shall already now assign to Ferrofacta the claims against the buyer arising from resale of the goods subject to reservation of title in the amount of the final amount of the commercial invoice as agreed with Ferrofacta (including VAT). This assignment shall apply irrespective of whether the item of sale was resold without or after processing. The customer shall also continue to be authorised to collect the receivable after assignment. Ferrofacta's own power to collect the receivable shall remain unaffected by this. However, Ferrofacta will not collect the receivable as long as the customer meets his obligations to pay from the proceeds that are collected, is not in default of payment and, in particular, an application for the initiation of insolvency proceedings has not been made or there has been no suspension of payment.

4. Machining and processing or transformation of the item of sale by the customer shall always be in the name and on behalf of Ferrofacta. Hence, Ferrofacta is the manufacturer. In this case the customer's expectant right to the item of sale continues with regard to the transformed item. If the item of sale has been processed together with other objects that do not belong to Ferrofacta, Ferrofacta shall acquire co-ownership of the new item in proportion to the objective value of the subject matter to the other processed items at the time of processing. The same shall apply in the case of mixing. If mixing is carried out in such a way that the item of the customer is to be regarded as the main item, it is deemed as agreed that the customer shall transfer pro-rata co-ownership to Ferrofacta and thus keep Ferrofacta's sole or co-ownership that came about in this way in safe custody. To safeguard Ferrofacta's claims against the customer, the customer shall also assign those claims to Ferrofacta that he has accrued against a third party from the fusion of the goods subject to reservation of title with a piece of land; Ferrofacta already now accepts this assignment.

## **VII. Liability/Warranty for defects**

1. Warranty rights of the customer presuppose that he has, in due form, met his obligations to examine and object that are owing according to Article 377 HGB (Commercial Code).
2. The usability of the subject matter of the contract, in particular with regard to the type of construction, the material and the application of the materials in their practical surroundings, shall lie exclusively in the area of responsibility of the customer. Ferrofacta shall not be liable for product defects originating from the customer's sphere.
3. The following damages that arise later are not defects as to quality as defined by warranty rights pursuant to the law on sales:
  - damages caused by improper or abusive treatment;
  - damages caused by chemical reactions of the product supplied by Ferrofacta to the customer's materials;
  - damages caused by mechanical abrasion on the customer's materials by the product supplied by Ferrofacta;
  - damages caused by excessive stress on the item of sale;
  - damages caused by incorrect installation or treatment by the customer.
4. Insignificant, reasonable deviations in dimensions and execution shall not be an entitlement to make complaints. Notably, relating to the range of free tolerances, insignificant deviations are those that deviate by less than 5 % from the details stated in Ferrofacta's declaration of acceptance.
5. If the customer specifies a certain material for processing by Ferrofacta or if he makes this material available to Ferrofacta, Ferrofacta shall not be liable for any damages/defects to the item of sale arising from this.
6. In the event of a defect Ferrofacta shall at its own option be able to remedy the defect (rectification of a defect) or supply an item free from defects (subsequent delivery). Ferrofacta's right to refuse supplementary performance in accordance with Article 439 (3) BGB (German Civil Code) shall not be affected by this.

7. Ferrofacta shall be liable according to the statutory provisions for damages arising from injuries to life, body or health that are based on an intentional or grossly negligent breach of duty, as well as for fraudulent behaviour. Furthermore, Ferrofacta shall be liable for damages that are encompassed by the liability according to compulsory statutory provisions such as the Product Liability Act.
8. Ferrofacta shall only be liable for intentional or grossly negligent behaviour with regard to damages or breaches of duty that do not come under VII. 7., unless the breach of duty involves a so-called cardinal duty, i.e. a duty demanding compliance according to contract in order to be able to manage the contract.
9. Claims by the customer concerning necessary expenditures for the purpose of supplementary performance, in particular transport costs, tolls, labour costs and material costs, shall be excluded insofar as the expenditures do not increase because the goods delivered by Ferrofacta were subsequently moved to a place other than the customer's branch office, unless the movement complies with their intended use.
10. Claims regarding defects shall fall under the statute of limitations 12 months after delivery of the goods supplied by Ferrofacta to the respective customer. The statutory period of limitation shall apply to claims for damages in the case of deliberate intention and gross negligence as well as injuries to life, body and health that are based on an intentional or negligent breach of duty by the user.

#### **VIII. Duty to supply information/Information from the customer**

1. The customer shall be obligated to inform Ferrofacta immediately if the delivered subject matter is attached by way of execution or exposed to other intervention by third parties. The customer shall bear all costs that Ferrofacta has to pay in order to bring about cancellation of access.
2. The customer hereby warrants that he is not the founder of a new business as defined in Article 512 BGB (German Civil Code).
3. Furthermore, the customer warrants that his assets are not at risk and that insolvency proceedings are not pending with regard to his assets or that there is no threat of such proceedings in the near future.

#### **IX. Industrial property rights**

1. Ferrofacta reserves the rights of ownership and copyrights to all documents, e.g. calculations, drawings etc., provided to the customer in connection with placing the order. Notably, this shall also include the patent rights in connection with the hot runners developed by Ferrofacta. These documents must not be made accessible to third parties, unless Ferrofacta gives its express consent to the purchaser, which must be in text form at the very least.
2. If Ferrofacta develops a new product or a new procedure for the customer for the production of a certain product, Ferrofacta shall be the owner of the industrial property rights evolving from this. In particular, Ferrofacta shall then be entitled to register the industrial property rights evolving from this in its own name.

3. All illustrations, drawings, calculations and other documents received by the customer shall, if the contract is not concluded or if the contractual relationship is subsequently terminated - be returned to Ferrofacta on first demand.

**X. Final provisions**

1. This contract and the entire legal relations of the parties shall be subject to the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The place of performance and the exclusive place of jurisdiction for all disputes arising from this contract is Frankenberg (Eder).
3. All agreements made between the parties for the purpose of executing this contract, have been recorded in writing in this contract.
4. If individual provisions of these General Terms and Conditions of Business should be invalid, this shall not affect the validity of the remaining provisions. In a case of this kind, the parties shall endeavour to replace the invalid provision by a valid provision that is most likely to comply with the economic intent of the contractual relationship.
5. If these General Terms and Conditions of Business are handed to the customer in two or more different languages, the German version of the General Terms and Conditions of Business shall be authoritative if there should be any deviations.