

General Conditions of Purchase of FormFactor GmbH

1. General, Scope of Application

- (1) These General Conditions of Purchase apply to all agreements of purchase and sale and contracts for work and materials ("Purchase Contract") by and between FormFactor GmbH and our suppliers ("Seller"). These General Conditions of Purchase only apply if the Seller is an entrepreneur (Sec. 14 German Civil Code), a legal person under public law or a special fund under public law. These General Conditions of Purchase apply exclusively; General Terms and Conditions of Business of the Seller do not apply even if the Seller expressly refers thereto within the framework of the Purchase Contract.
- (2) The General Conditions of Purchase as applicable from time to time also apply as framework agreement for future Purchase Contracts with the same Seller without any requirement on our part to refer thereto in each individual case. In that case, we will inform the Seller without delay of any change to our General Conditions of Purchase.
- (3) Individual agreements with the Seller including trade clauses take precedence over these General Conditions of Purchase. A written contract and/or our written confirmation shall be decisive for the content of such agreements. In case of doubt, international trade clauses shall be interpreted in accordance with the Incoterms issued by the International Chamber of Commerce in Paris (ICC) as applicable at the time of conclusion of the Purchase Contract.
- (4) Legally relevant declarations to be made and notices to be given to us by the Seller after conclusion of the Purchase Contract (e.g. setting of time-limit, reminder letter, declaration of rescission) must be in written form in order to be valid. In all other respects, the text form (in particular telefax or email) shall be sufficient where the written form of declarations is provided by contract or by law.
- (5) Any reference to the application of statutory provisions is only for the purpose of clarification. Therefore, the statutory provisions apply even without such clarification if not directly changed or expressly excluded in these General Conditions of Purchase.

2. Conclusion of the Purchase Contract

- (1) Our order becomes binding at the earliest when placed or confirmed in writing. The Seller must draw our attention to obvious errors (e.g. clerical or calculation errors) or incompleteness of the order including the order documents for the purpose of correction or completion before acceptance; otherwise the Purchase Contract shall be deemed not concluded.
- (2) The Seller shall, within 4 days, confirm our order in writing or unconditionally execute our order especially by dispatching the goods (acceptance), unless otherwise provided in the order. Delayed acceptance shall be deemed a new offer requiring acceptance by us.

3. Delivery Period and Default in Delivery

- (1) The delivery period stated by us in the order is binding. The delivery period shall be 2 weeks from conclusion of the Purchase Contract if no delivery period has been stated in the order or otherwise been agreed upon. The Seller is obligated to immediately inform us in writing if it anticipates

that it will be unable to observe agreed delivery dates for any reason whatsoever.

- (2) If the Seller does not provide its performance or does not provide it within the agreed delivery period or if the Seller is in default, our rights – in particular the right of rescission and the right to claim damages – shall be governed by the statutory provisions. The regulations in ss.(3) remain unaffected.
- (3) If the Seller is in default, we can claim a contract penalty in an amount equal to 1% of the net price (delivery value) of the delayed goods for each full calendar week, but not more than 5% of the net price of the contractual delivery value in total. We are entitled to claim the contract penalty in addition to fulfillment and as minimum amount of damages owed by the Seller according to the statutory provisions; the assertion of further claims for damages remains unaffected. If we accept the delayed performance, we will claim the contract penalty upon final payment at the latest.

4. Performance, Delivery, Passing of the Risk

- (1) The Seller is not entitled, without our prior written consent, to have a third party (e.g. a subcontractor) provide the performance owed by the Seller. The Seller bears the risk of procurement of its performance, unless the Purchase Contract relates to an individual item that has already been manufactured.
- (2) Delivery is made DAP (INCOTERMS 2010) to the place stated in the order. If no place of destination is stated and unless otherwise agreed upon, delivery shall be made to our headquarters in Thiendorf (Saxony/Germany). The relevant place of destination is also the place of performance (obligation to bring to our place – "*Bringschuld*").
- (3) Each shipment must be accompanied by an invoice and a delivery note stating the date (issue and dispatch), the content of the shipment (article number and number), our order data (date and number), the correct code number of the Combined Nomenclature and, as the case may be, the code of the EU Dual Use Regulation. Other required information and documents (e.g. for the customs, import or export control) must also be attached. Reference is made to the duty of indication pursuant to Article 22 para. 10 of the EU Dual Use Regulation if an item is listed in Annex I to the Regulation. In the case of an item of U.S. origin, the Export Control Clearance Number (ECCN) may have to be indicated in addition. If the delivery note is missing or is incomplete, we are not responsible for delays in processing and payment resulting from this. A relevant notice of dispatch with the same content shall be sent to us separately from the delivery note.
- (4) The risk of accidental loss and accidental deterioration of the item devolves on us upon handover at the place of performance. If acceptance has been agreed upon, such acceptance shall be decisive for the passing of the risk. The statutory provisions of the law on contracts for work and services also apply in the case of acceptance. Default in acceptance on our part shall be deemed equal to handover or acceptance.

5. Prices and Payment Terms

- (1) The price stated in the order is binding. All prices include statutory value-added tax and other duties (e.g. customs), unless otherwise agreed upon.
- (2) Unless otherwise agreed in the individual case, the price includes all performance and ancillary performance by the Seller (e.g. installation, assembly) and all ancillary costs (e.g. proper packaging, transport costs including any transport and third party liability insurance). At our request, the Seller shall take back packaging.
- (3) The agreed price shall be due and payable within 60 calendar days after full delivery and performance (including agreed acceptance, if any) and receipt of a proper invoice. If we make payment within 14 calendar days, the Seller shall grant us a discount of 3% of the net invoice amount. In the case of bank transfer, payment is made in a timely manner if our transfer order is received by our bank before expiration of the time fixed for payment; we are not responsible for any delay by the banks involved in the payment transaction.
- (4) We do not owe maturity interest. The default interest is 5 per cent above the base rate *per annum*. The occurrence of default by us shall be governed by the statutory provisions with a written reminder by the Seller being required in each case, as the case may be in derogation of the statutory provisions.
- (5) We have rights of set-off and rights of retention and we may raise the defense of unfulfilled contract as provided by statute. We are entitled, in particular, to retain due payments as long as we still have claims against the Seller on the basis of incomplete or faulty performance.
- (6) The Seller is only entitled to rights of set-off and rights of retention on the basis of counterclaims that have become *res judicata* or which are undisputed.

6. Confidentiality and Reservation of Title

- (1) We retain title to and copyrights in pictures, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents may exclusively be used for the contractual performance and must be returned to us after performance of the Purchase Contract. The documents may not be disclosed to third parties, and that non-disclosure obligation survives the termination of the Purchase Contract. In all other respects, the contract parties are not subject to restriction regarding the use of the information received and/or exchanged within the framework of the performance of the Purchase Contract. They are, however, entitled to demand that the respective other contract party enters into a customary confidentiality agreement if it can be anticipated upon conclusion and/or performance of the Purchase Contract that confidential information will be disclosed.
- (2) The provisions above apply *mutatis mutandis* to substances and materials (e.g. finished and semi-finished products) and to tools, samples, models and other items (e.g. software) provided by us to the Seller for manufacturing purposes. Such items shall – as long as they are not processed – be kept separately and be adequately insured against destruction and loss at the Seller's cost and expense.
- (3) Any processing, mixing or combination (reprocessing) by the Seller of provided items will be made on our behalf. The same applies if the supplied goods are reprocessed by us so that we are deemed manufacturer and we obtain ownership of the product at the latest upon reprocessing in accordance with the statutory regulations.

- (4) The transfer of title to the goods to us shall be unconditional and irrespective of payment of the price. However, if we accept, in the individual case, the Seller's offer of transfer of title subject to payment of the purchase price, the Seller's retention of title expires at the latest upon payment of the purchase price for the supplied goods. We remain entitled, even before payment of the purchase price, to resell the goods in the ordinary course of business with advance assignment of the claim resulting from this (in an auxiliary manner, application of the simple retention of title and the extended retention of title covering the resale). Excluded are thus, in any case, all other forms of retention of title, in particular, the enlarged retention of title, the transmitted retention of title and the extended retention of title covering reprocessing.

7. Faulty Delivery, Examination, Subsequent Performance

- (1) Unless otherwise provided hereinafter, the statutory provisions apply to our rights in the case of material defects of the goods or defects of title to the goods (including wrong delivery or short delivery as well as improper assembly, faulty assembly, operating or user instructions) and in the case of other breach of duty by the Seller.
- (2) The Seller shall be liable, in particular, for the goods having the agreed characteristics and quality at the time when the risk passes to us. An agreement on characteristics and quality shall be deemed to be, in particular, those product descriptions which (especially through designation or reference in our order) are the subject of the relevant Purchase Contract or which have been made known publicly by the Seller or by the manufacturer (especially via the Internet or in catalogues etc.). In all other respects, the question of faultiness will be assessed on the basis of the statutory provisions. If, in this connection, product requirements under public law (including duties of conduct in relation to the product or the market) must be complied with, the regulations applying in the Federal Republic of Germany and in the country of destination of the final product (as far as known to the Seller) shall, in any case, apply as a standard.
- (3) In derogation of Sec. 442(1) s. 2 German Civil Code, we are also unrestrictedly entitled to claims based on defects if the defect was unknown to us at the time of conclusion of the Purchase Contract as a result of gross negligence.
- (4) The statutory provisions (Secs. 377, 381 German Commercial Code) apply to the commercial duty to examine the goods and to give notice of defects with the following proviso: Our duty of examination relates to defects which become apparent during our incoming goods examination including an external inspection also of the delivery documents and during our quality control by way of random sampling (e.g. transport damage, wrong delivery or short delivery). In the case of other defects, it is decisive whether and to what extent an examination is advisable in the ordinary course of business depending on the circumstances of the individual case. If acceptance has been agreed upon, no duty of examination is owed. Our duty to give notice of defects discovered later remains unaffected. In all cases, our complaint (notice of defects) is deemed to be made immediately and in time if dispatched within thirty (30) days.
- (5) The subsequent performance also includes the removal of the defective goods and the reinstallation if the goods have been installed in another object in accordance with their intended purpose. The costs incurred by the Seller for the

examination and the subsequent improvement shall also be borne by the Seller even if it turns out that there actually was no defect. This does not apply if we recognized, or failed to recognize in a grossly negligent manner, that there was no defect.

- (6) In the event that the Seller does not fulfill its duty of subsequent performance – at our choice either by removing the defect (subsequent improvement) or by supplying a faultless item (replacement) – within a reasonable period of time fixed by us, we may ourselves remove the defect or claim from the Seller reimbursement of the expenses accruing therefore and/or a respective advance payment. If the subsequent performance by the Seller failed or if we cannot be expected to accept it (e.g. because of special urgency, endangering operational safety or threat of occurrence of disproportionate damage), no such period needs to be fixed; we will inform the Seller of any such circumstances without delay, if possible in advance.
- (7) In all other respects, we are entitled to reduce the purchase price or to rescind the Purchase Contract in accordance with the statutory provisions in the event of a material defect or a defect of title. In addition, we are entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions.

8. Intellectual Property Rights

- (1) In order to make the use of the goods – in particular of the pertaining software and documentation - for the intended purpose possible, the Seller hereby grants us an irrevocable, non-exclusive and cost-free license or a corresponding use right to use, process, repair, construct and/or sell the goods to the necessary extent. The license is granted for all intellectual property rights necessary to use the goods for the intended purpose. If there are copyrights in the goods, we are also granted a transferable, non-exclusive use right, which is unlimited in content, for all known and unknown methods of use including the right of reproduction, distribution, public communication and making accessible as well as adaptation.
- (2) If, within the framework of the Purchase Contract, the Seller develops, modifies or produces goods specifically according to our specifications, requirements or instructions ("Developments"), the Seller shall immediately inform us in writing of any and all intellectual property rights in such Developments existing at present or in future. At our request, the Seller shall be obligated to transfer those intellectual property rights to us or to grant us transferable, sub-licensable and exclusive use rights, which are unlimited in content, in such intellectual property rights for all known and unknown methods of use including the right of reproduction, distribution, public communication and making accessible as well as adaptation and further development. The Seller shall ensure that it receives from its employees and/or other agents the intellectual property rights which are necessary for such rights transfer. Payment of the agreed purchase price for the goods also represents compensation for the rights transfer. The Seller shall not disclose the Developments to third parties and use them exclusively for purposes of the Purchase Contract and not sell any Developments to third parties without our prior written consent; Clause 6. ss. 1 s. 1 applies *mutatis mutandis*.
- (3) The Seller is liable for the fact that no intellectual property rights of third parties within Germany or within the country of destination of the goods known to the Purchaser will be infringed by the delivery of the goods. Clause 7 applies

accordingly to the extent of liability, unless otherwise provided below. Clause 11. ss. 2 applies as regards the limitation period. If a third party asserts claims against us on the basis of infringement of intellectual property rights in the goods, the Seller shall indemnify and hold us harmless from such claims on our first written demand. The duty of indemnification also covers all expenses necessarily incurred by us out of or in connection with the claim asserted by the third party against us (including the costs of legal prosecution), unless the Seller proves that it is not responsible for the defect of title.

9. Product Liability

- (1) If the Seller is responsible for product damage, the Seller shall indemnify and hold us harmless from claims of third parties if and to the extent that the cause lies within the Seller's sphere of control and organization and the Seller is liable itself in relation to third parties.
- (2) Within the framework of its obligation to indemnify, the Seller shall also reimburse expenses pursuant to Secs. 683, 670 German Civil Code which arise from or in connection with claims by third parties including measures taken by us to avert danger (e.g. product recall). We will inform the Seller about the content and the scope of recall measures – as far as possible and reasonable – in advance and give the Seller the opportunity to comment thereon. Further statutory claims remain unaffected.
- (3) The Seller shall contract and maintain a general public liability insurance and an extended product liability insurance with a lump sum cover each of at least EUR 5 million in each instance and at least EUR 10 million per year. The product liability insurance must also cover recall costs.

10. Compliance, Export Control, Equal Employment

- (1) The Seller shall always comply with the law and observe national and international regulations, in particular, regarding foreign trade and payments law and anti-corruption regulations (including bribery and corruptibility). The Seller is obligated to obtain any permits that may be required for the shipment to the place of destination. The Seller shall comply with all customs regulations and indicate the correct customs value according to the GATT, in particular, for deliveries from outside of the EU. Should the goods be subject to special regulations, the Seller shall give notice of this.
- (2) Equal Employment Opportunity: We may be a government contractor or subcontractor to the United States government and subject to the equal employment opportunity obligations of federal contracts according to the Code of Federal Regulations (CFR), including but not limited to 41 CFR 60-300.5(a) and 41 CFR 60-741(a). The Seller may be subject to the following rules and regulations: This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

11. Compliance with statutory regulations, in particular the German Minimum Wage Act

- (1) While FormFactor generally expects its contractors to comply with all applicable statutory regulations, by confirming an

order, every supplier in particular assures and vouches that it will at all times comply with and fulfil all obligations resulting from the German Minimum Wage Act (Mindestlohngesetz – MiLoG) as amended. Contractors will indemnify FormFactor against any and all claims pursuant to Section 13 of the German Minimum Wage Act made against FormFactor ("Claims") by their employees or employees of third-party companies used by them to fulfil orders ("Third-Party Companies"). This applies accordingly for any Claims made against FormFactor pursuant to Section 13 of the German Minimum Wage Act by employees of any other subcontractor of the Third-Party Company ("Subcontractor") which is used by the Third-Party Company or one or several Subcontractors to fulfil our orders. This indemnification covers any and all costs incurred by FormFactor due to the assertion of claims by other third parties (e.g. social insurance agencies) and reasonable legal fees (at all events in accordance with the German Lawyers' Remuneration Act (Rechtanwaltsvergütungsgesetz – RVG)) for any necessary extrajudicial/judicial legal defence against Claims. To safeguard this indemnification, FormFactor can at any time request that a contractor provides appropriate security without undue delay. The prior consent of FormFactor is required for the use by contractors of Third-Party Companies – of whatever kind (including personnel leasing companies) – to fulfil the orders awarded to them by FormFactor. FormFactor will grant its consent without undue delay in response to an appropriate request from the contractor unless this conflicts with legitimate interests. Granting of such consent requires that the contractor likewise obliges the relevant Third-Party Company to comply with the requirements of the German Minimum Wage Act and only permits the use of Subcontractors by Third-Party Companies subject to the condition that Subcontractors are also obliged by the company engaging them in each case to comply with the requirements of the German Minimum Wage Act.

12. Statute of Limitations

- (1) Unless otherwise provided hereinafter, the mutual claims of the contract parties shall become statute-barred in accordance with the statutory provisions.
- (2) In derogation of Sec. 438(1) no. 3 German Civil Code, the general limitation period for claims based on a defect (warranty period) is three (3) years from passing of the risk. If acceptance has been agreed upon, the limitation period starts to run upon acceptance. The 3-year limitation period applies *mutatis mutandis* to claims based on a defect of title including with respect to intellectual property rights, with the statutory limitation period for surrender claims *in rem* of third parties (Sec. 438(1) no. 1 German Civil Code) remaining unaffected; claims based on a defect of title shall not become statute-barred as long as the third party can still assert the right against us – in particular because the claim has not yet become barred by the statute of limitations.
- (3) The running of the statute of limitations is suspended upon receipt of a written notice of defect by the Seller. In the case of subsequent performance, the limitation period starts to run anew for replaced or subsequently improved parts, unless the Seller was not obligated to provide subsequent performance in a manner recognizable by us (goodwill performance).
- (4) The limitation periods under the sales law including the aforesaid extensions apply – as provided by statute – to all

contractual claims based on a defect. If we are also entitled to extra-contractual claims for damages based on a defect, the standard statutory limitation period (Secs. 195, 199 German Civil Code) shall apply thereto, unless the application of the limitation periods under the sales law leads to a longer limitation period in the individual case.

13. Choice of Law and Place of Jurisdiction

- (1) These General Conditions of Purchase and the contractual relationship between us and the Seller shall be governed by the laws of the Federal Republic of Germany with the International uniform law, in particular, the United Nations Convention on Contracts for the International Sale of Goods being excluded. The choice of law also applies to non-contractual obligations which are closely connected with the agreement. The scope and extent of the choice of law is governed by the statutory provisions.
- (2) If the Seller is a business person [*Kaufmann*] within the meaning of the German Commercial Code, a legal person under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising from the contractual relationship is Dresden, Saxony/Germany (Local Court and/or Regional Court). This applies *mutatis mutandis* if the purchaser is another entrepreneur. However, we are also entitled, in all cases, to file suit at the place of performance of the delivery obligation pursuant to Clause 4. ss. 2 or pursuant to an individual agreement taking precedence or at the general place of jurisdiction of the Seller.

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