

## General Terms of Sale of FutureCarbon GmbH

### 1. Scope, written form

- 1.1. These General Terms of Sale are applicable exclusively. They apply to mercantilists (§ 14 BGB = German Civil Code), legal persons under public law and special funds under public law. Deviating terms and conditions of the customer shall only be accepted if we have confirmed their validity in writing. Our General Terms of Sale also apply even if we execute the delivery unreservedly, fully aware of differing terms and conditions of the customer.
- 1.2. All agreements between us and the customer regarding execution of this contract must be made in writing in this contract. This is particularly imperative for the acceptance of warranty statements.
- 1.3. These General Terms of Sale in the version actual in time shall also apply to all future business relations with the customer, even if not explicitly mentioned in agreements.
- 1.4. It is agreed pursuant to § 312e para. 2 sentence 2 BGB that § 312e para. 1 no. 1-3 and sentence 2 BGB shall not apply.

### 2. Offers, conclusion of contracts, contract documents, terms of contract

- 2.1. Our offers are subject to change. We can accept contract offers within one week.
- 2.2. Illustrations and information in promotional material and other depictions are not binding.
- 2.3. We retain ownership and copyright to illustrations, drawings, calculations and other files or documents. They may not be made available to third parties. This applies particularly to such files or documents labeled "confidential". Before transferring them to third parties the customer requires our explicit written consent
- 2.4. In the absence of other arrangements, the agreed drawings, samples, descriptions and other documents are considered technical contract documents. In doing so, the commercial material standards, designations and DIN tolerances shall be taken as standard for raw materials. In this connection, weight specifications are non-binding.

### 3. Prices, payment terms, prepayment, right of withdrawal, delay, return, retention of goods, charging, counterclaim

- 3.1. Unless the order confirmation does not state otherwise, all prices are ex stock (stock articles) or ex works (according to INCOTERMS as actual at a time) in euros, excluding packaging, freight, insurance, customs duties or other charges, plus the respective applicable VAT (value-added tax). In the case of agreed delivery, delivery shall be made free to curbside at the agreed unloading point. In this case the customer is obligated to provide at their expense in time the personnel and equipment necessary to ensure smooth discharge. It is understood that the vehicle can reach the unloading point directly and can be discharged immediately. Should these conditions not be met, resulting additional costs will be charged separately.
- 3.2. For orders, the price list valid on the date of the order applies. Should material price or wage increases occur between receipt of order and delivery, we reserve the right to an appropriate price adjustment.
- 3.3. Unless agreed otherwise, payment shall be made in advance by check/cash advance or credit card. Should delivery against invoice be agreed upon, payment shall be made within 30 days of the issuance of the invoice without deduction. All money transaction expenses shall be borne by the customer.
- 3.4. We are not obliged to accept payment by check or draft. Should such be accepted, we do so only on account of performance.
- 3.5. Should the customer be at least two installments in arrears, we are entitled to rendering of the entire claim due, also including from other bills, even if checks or drafts had been accepted. In this case the documents shall be returned against immediate cash payment.
- 3.6. Should a major change or deterioration occur in the financial situation of the customer after conclusion of the contract, by which we believe our claim to compensation as being at risk, or should such a situation of the customer already exist at the time of conclusion of the contract but only become known retrospectively, we can refuse performance until reciprocation. This is particularly true for cases in which unsuccessful enforcement actions, bill protest, check protest, filing for personal insolvency, moratorium efforts, liquidation or similar are given. In these cases we can set the customer a time limit for providing

## General Terms of Sale of FutureCarbon GmbH

return service or security. Should the return service or security not be provided despite notice given the above conditions, we have a right of withdrawal. Claims for compensation of damages remain unaffected.

- 3.7. Should the customer default on payment, we are entitled - eventually after having set a new deadline required by law - to take back the goods, to enter the premises of the customer and to seize the goods. We can also prohibit removal of the delivered goods.
- 3.8. Should goods delivered by us be taken back, such goods will be credited at a reasonable discount to the customer without prejudice to the assertion of additional claims and will be credited against our open claim. The customer is entitled to prove lower depreciation in each individual case.
- 3.9. Our claims can only be offset against undisputed or legally determined claims. Cross-claims are excluded. The customer shall only be entitled to follow a retention lien as far as their counter claim is based on the same contractual relationship.

### **4. Release from obligation to perform, delivery period, partial delivery, right of withdrawal, damages for delay**

- 4.1. Delivery of the goods shall be subject to timely and accurate supply to ourselves.
- 4.2. The delivery time begins on the date of order confirmation. Partial deliveries shall be allowed in as much as reasonable.
- 4.3. We shall not be held responsible for delays in delivery due to force majeure or other circumstances not caused by us, in particular transportation and operational disturbances, strikes, lockouts, raw material shortages. Should we be unable in said situations to supply within the agreed delivery period, the delivery time shall be extended appropriately. Should an obstacle to supply exist beyond the appropriately extended delivery period, we shall be entitled to rescind the contract.
- 4.4. Should we be unable to comply with the agreed delivery time, the customer is obligated - at our request - to declare within a reasonable time whether they continue to demand delivery. Should they fail to produce such declaration, we are entitled to withdraw from or terminate the contract after a reasonable period.
- 4.5. Should we be in default, the following shall apply:

- 4.5.1. Should delivery on a fixed date be agreed, or should the customer be able to assert that their interest in execution of the contract has been dropped, or should the delay be based on a premeditated contract breach caused by us, our representatives or our vicarious agents, we shall be liable for damages for delay under the statutory provisions. In the event of a grossly negligent breach of contract by us, our liability for damages for delay shall be limited to the foreseeable, typically occurring damage.
- 4.5.2. Should we, our representatives or our vicarious agents have committed a breach of an essential contractual obligation, and should there exist no liability under the statutory provisions referred to in para. 4.5.1. , our liability for damages for delay shall be limited to the foreseeable, typically occurring damage.
- 4.5.3. In other cases our liability for delay shall be limited to a maximum of 5% of the delivery value.
- 4.5.4. Other statutory claims of the customer are not excluded thereby.

### **5. Passing of risk**

Unless order confirmation does not state otherwise, delivery "ex works" and regarding stock articles "ex stock" (according to INCOTERMS as actual at a time) is agreed upon. Dispatch is always undertaken at the risk of the customer, even if delivered from a place other than the place of performance, or even with free freight forwarding or by dispatch by our own people or vehicles.

### **6. Warranty claims**

- 6.1. Supplied goods must be investigated by the customer immediately after delivery, as far as is practicable in the regular course of business. Should a defect be found, this must be reported to us immediately. Should the customer fail to report the defect, the goods are considered as approved, unless there is a defect that was not discernible when investigated. Should such a defect appear later, the report must be made immediately after its discovery, otherwise the goods are considered as approved also in respect of this defect. § 377 HBG (German Commercial Code) remains unaffected. Also in the case of recourse of the mercantilist pursuant to § 478 BGB (German Civil Code), the customer is not absolved from their obligation to investigate. Should they not immediately announce the defect claimed by their purchaser in such cases, the product is considered as approved, also with regard to this defect.

## General Terms of Sale of FutureCarbon GmbH

- 6.2. In as much as a deficiency exists, we are entitled to determine the type of supplementary performance taking into account the nature of the defect and the legitimate interests of the client. Regarding these contracts, supplementary performance is considered as failed after the unsuccessful third attempt. This paragraph does not apply to the case of recourse according to § 478 BGB.
- 6.3. In the case of rectification of defects, we are only required to provide the necessary expenditures, especially transportation, infrastructure, labor and material costs in as much as these do not increase because the product is taken to a place other than the domicile or the subsidiary of the customer to which the delivery was addressed. This paragraph does not apply in the case of recourse according to § 478 BGB.
- 6.4. The warranty claims of customers, including claims for damages are limited to one year. This shall not apply to the case of recourse according to § 478 BGB; furthermore, this shall not apply to the cases of §§ 438 para. 1 no. 2 BGB and § 634a para. 1 no. 2 BGB. Nor shall this apply to claims for damages arising out of injury of life, body or health or due to gross negligence or premeditated breach of duty by us or our vicarious agents. In the case of § 438 I no. 2 b BGB (materials for buildings) the warranty claims of the customer are limited to two years. The sale of used materials is undertaken excluding all claims for defects.
- 7. Liability for damages and reimbursement of expenses**
- 7.1. In the event of our contractual liability for damages the following shall apply:
- 7.1.1. Should claims be based on a premeditated breach of duty by us, our legal representatives or our vicarious agents, we shall be liable for damages under the statutory provisions. Should claims be based on a grossly negligent breach of duty by us, our legal representatives or vicarious agents, liability shall be limited to the foreseeable, typically occurring damage.
- 7.1.2. Should we, our legal representatives or vicarious agents have culpably violated a duty, performance of which makes proper execution of the contract possible in the first place, and violation of which jeopardizes attaining the purpose of the contract and compliance with which the customer relies on as a rule, and if there is no case of liability under the statutory provisions as defined in para. 7.1.1., liability shall be limited to the foreseeable, typically occurring damage.
- 7.1.3. Unless not otherwise provided for in para. 7.1.1. and 7.1.2., our liability for damages shall be excluded. The same shall apply in the event of recourse actions pursuant § 478 BGB against us in our function as supplier.
- 7.2. The liability exclusions and limitations in section 7.1. shall also apply to other claims, in particular claims in tort or claims for reimbursement of futile expenses instead of performance.
- 7.3. The liability exclusions and limitations in section 7.1. shall not apply to any current claims pursuant §§ 1, 4 Product Liability Act or due to culpable violation of life, body or health. Nor shall they apply in as much as we have issued a warranty for the quality of our products or for success of performance, nor in as much as we have promised to bear a procurement risk and the warranty case or the procurement risk has occurred.
- 7.4. Our liability arising from a promise to bear a procurement risk shall only exist in as much as we have issued such promise explicitly in writing.
- 7.5. Unless the limitation of liability pursuant para. 7.1. for claims of manufacturer's liability pursuant § 823 BGB intervenes, our liability shall be limited to indemnification of our liability insurance. In as much as the insurer should not answer for the damage at all or not in full, we shall be bound to liability up to the amount of coverage. The amount of coverage shall be communicated by us on customer's demand. This paragraph does not apply to cases of culpable violation of life, body or health.
- 7.6. Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, members of staff, legal representatives and vicarious agents.
- 7.7. Damages for delay are regulated in a special provision in Art. 4, para. 4.5.
- 7.8. The above regulations are not connected with a reversal of the burden of proof.
- 8. Complementary and digressing arrangements in international contracts**
- 8.1. Should the customer have their place of business outside the Federal Republic of Germany the following rules shall apply:
- 8.1.1. We shall not be liable for the admissibility of the contractually determined, suppositional use of the delivered goods in accordance with the

## General Terms of Sale of FutureCarbon GmbH

- requirements of the recipient country. Nor shall we be liable for taxes incurred in that country.
- 8.1.2. We shall not be responsible for delivery obstacles resulting from government policies, especially import or export restrictions.
- 8.2. Should the customer have their place of business outside the Federal Republic of Germany and should the United Nations Convention on Contracts for the International Sale of Goods (CISG, Vienna CISG) be applicable, the following rules shall also apply:
- 8.2.1. Amendments to or termination of the contract must be in writing.
- 8.2.2. Instead of Art. 6 and 7 the following shall apply:
- 8.2.2.1. We shall only be liable to the customer for damages in accordance with statutory provisions if an infringement is based on an intentional or grossly negligent breach of contract by us, our legal representatives or vicarious agents. We shall also be liable under the law if we violate a material contractual obligation.
- The foregoing limitation of liability shall not apply to any existing claims under § 1, 4 of the German Product Liability Act nor regarding claims where the product caused injury to life or body of a person.
- 8.2.2.2. Should delivered goods be contrary to contract, the customer shall have the right to contract cancellation or replacement only if claims for damages against us are excluded, or if it is unacceptable for the customer to use the goods that are contrary to contract and to claim the remaining damage. In such cases we shall initially be entitled to remedy the defect. Should remedying of the defect fail or should it lead to undue delay, the customer shall be entitled to terminate the contract or demand replacement. The customer shall also be entitled to this, should removal of the defect cause an unreasonable inconvenience or uncertainty concerning the reimbursement of possible expenses incurred by the customer.
- 9. Retention of title**
- 9.1. We reserve ownership of delivered goods until receipt of all payments from the contract; in the event of an ongoing business relationship existing, until receipt of all payments from this business relationship. This shall also apply if our debt claims have been included in a current account and the balance has been struck and acknowledged, as well as for future claim.
- 9.2. The customer is obligated to handle delivered goods with care, in particular to store them properly; they are also obliged to insure them sufficiently at their own expense at full new value against fire, water, theft and damage.
- 9.3. In the event of seizure and other intervention by third parties, the customer is obligated to notify us in writing without delay in order to safeguard our rights. Should the third party be unable to reimburse us for judicial or extrajudicial costs incurred, or should the third party be in delay with the payment of such costs, the customer shall be liable for our loss.
- 9.4. The customer is entitled to resell and use delivered goods in the ordinary course of business. However, they shall assign to us all claims for payment against their customers or third parties in connection with the resale of our goods at the value of such goods; this shall apply regardless of whether the delivered goods shall have been resold without or after processing. Value of such goods means the agreed invoice grand total (including VAT). Should we hold the property title on the resold goods jointly with others, the assignment of receivables corresponds to the amount that represents our share in the property right. The customer shall not be entitled to any other amortization of the goods, especially not to pledging or security assignment.
- 9.5. The customer shall still be entitled to the collection of receivables from the resale in spite of the assignment. Our authority to collect the claim ourselves shall remain unaffected. However, we commit ourselves not to collect the claim as long as the customer meets their payment obligations, as long as they are not in arrears, and in particular no motion to open insolvency proceedings has been filed or payments have ceased. Should this be the case, however, we can demand that the customer inform us about the assigned claims and their debtors, provide all information necessary for collection, deliver relevant documents and inform their debtor of the assignment.
- 9.6. The processing or transformation of delivered goods by the customer shall always be conducted for us. The customer's expectant right to goods supplied shall pass over to the transformed items. Should delivered goods be processed together with other objects not belonging to us, we shall acquire joint property right on the new items in proportion of the objective value of delivered goods to the other processed objects at the time of processing. For items generated through processing the same rules shall apply as for goods delivered under reserve.

## General Terms of Sale of FutureCarbon GmbH

- 9.7. Should delivered goods be inextricably mixed, blended or connected with other objects not belonging to us, we shall acquire joint property right on the new matter in proportion of the objective value of delivered goods to the other objects at the time of mixing, blending or connecting. Should the process occur in a way that the customer's item has to be considered as the main object, it is hereby agreed that the customer confers pro-rata co-ownership to us and safeguards the exclusive or joint ownership for us free of charge.
- 9.8. In order to secure our claims against them, the customer assigns to us at the value of the goods subject to retention of title also the receivables together with all ancillary rights and rank before the rest that accrues to them against a third party from the combination of the goods subject to retention of title as an essential part of a plot of land, ship, ship building or aircraft of another party. Art. 9, para. 4, sentence 2 and 3 shall apply accordingly.
- 9.9. To secure our claims against them, the customer also assigns to us the receivables at the value of the goods subject to retention of title together with all ancillary rights and rank before the rest that accrues to them from the sale of their own land, ship, ship building or aircraft, with which they have connected the goods subject to retention of title as an essential commodity, to a third party. Art. 9, para. 4, sentence 2 and 3 shall apply accordingly.
- 9.10. We commit ourselves to release the securities due to us on the customer's request insofar as the realizable value of our securities exceeds the claims that need to be secured by more than 10% or the nominal value by more than 50%. The selection of the securities to be released lies with us.

### **10. Applicable law, place of performance, jurisdiction**

- 10.1. This contract shall be subject to the laws of the Federal Republic of Germany.
- 10.2. Place of fulfillment for all performance from this contract is 95448 Bayreuth, Germany.
- 10.3. Regarding contracts with merchants, legal entities under public law, special assets subject to public law and with foreigners who do not have domestic jurisdiction, the jurisdiction is 95448 Bayreuth, Germany. We do, however, reserve the right to file a suit at the headquarters of the customer.

### **11. Miscellaneous**

Should any provision of this agreement be or become ineffective, the validity of other provisions of this contract shall not be affected.