

GENERAL TERMS AND CONDITIONS (SALE)

I. Scope of application

These General Terms And Conditions (Sale) apply to all contracts for deliveries or services between customers and FTB-Filtertechnik Brockmann GmbH & Co. KG (hereinafter FTB) which come into force after 01/01/2022.

Customers within the meaning of these GTCs are companies as merchants, legal entities within private and public law or special funds under public law within the meaning of section 310 I of the German Civil Code (BGB).

These general terms and conditions apply exclusively to all purchases and orders from FTB. Deviations from these GTCs can only be agreed with the written consent of FTB.

II. Conclusion of contract

1. The contract with the customer regarding a delivery or service comes into force with the written acceptance of the contractual offer. Confirmation by fax or e-mail is also regarded as a written confirmation.
2. All documents handed to the customer in connection with the issuing of an order, such as calculations or drawings, remain the property of FTB. FTB retains the copyrights to these documents. These documents may not be made accessible to third parties. If a contract is not entered into with the customer, these documents are to be returned to FTB immediately.

Deviations from these basic rules require the written consent of FTB.

III. Prices and payment

1. Our prices are ex works (DDU), excluding packaging and plus statutory VAT. All of the price information refers to net prices. The costs of packaging or special packaging are shown as separate items on the invoice.
2. For special labelling of cardboard boxes, FTB charges a fee amounting to 3% of the net goods value. For individual packaging, such as consignments, FTB charges a fee amounting to 7% of the net goods value.
3. Shipping costs within Germany are calculated as follows:

The shipping costs on the part of FTB within Germany are a flat rate of €8.95 per package, €28.00 per roll and €38.00 per pallet.

From five parcels the dispatch takes place on a pallet.

If there are two or more rolls, they are also shipped on a pallet.

Several or different types of shipping may be required depending on the size of the order,

For special shipping methods such as express or international shipping, the customer hereby bears the associated costs.

The customer can collect the goods himself from FTB free of charge by means of a written agreement (II, Paragraph 1).

If the customer requests a despatch advice before delivery of the goods, this service will be invoiced at €7.50 per delivery. This happens regardless of whether this assignment was registered directly with FTB or centrally.

Should it become evident after the conclusion of the contract, that payment is jeopardised by the Buyer's lack in financial means (e.g. commencement of insolvency proceedings), we are entitled to withdraw from the contract or to terminate it (§ 321 BGB) – if necessary after fixing a time limit. In such cases, we can also demand payment of all claims from the current business relationship with the Buyer which are not yet due., we are responsible according to the statutory provisions Refusal of performance and - if necessary after setting a deadline - entitled to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of specific items (making to specification) we can withdraw immediately; this shall not affect the legal provisions concerning the dispensability of fixing a time limit.

4. The minimum order value is €100 net goods value. FTB charges a €20 surcharge for orders below the minimum order value.
5. The payment of the purchase price is to be made exclusively into one of the stated accounts of FTB. If not otherwise agreed with the customer, the purchase price is to be paid within 30 days without any deductions. FTB grants the customer a cash discount of 2% for a payment made within 8 days following the invoice date. In the event of a default of payment, default interest amounting to 8% above the respective discount rate of the European Central Bank will be applied. The claiming of greater damage caused by delay remains unaffected by this. The second reminder incurs a €5 reminder fee, the third reminder a €15 reminder fee. If no payment is made after the third reminder, FTB will initiate the judicial dunning process without further notice.
6. If no fixed price agreement was made, FTB reserves the right to make appropriate price changes due to altered wage, material and distribution costs for deliveries that take place 3 months or later following conclusion of contract.
7. The customer shall only have a right to off-setting of invoice sums with his own receivables against FTB if his counterclaims have been legally established or are recognised by FTB. The customer is only authorised to exercise the right of retention if his counterclaim is based on the same contractual relationship.

IV. Delivery time

1. The observance of the agreed delivery deadline requires the timely and proper fulfilment of the customer's obligations, where his cooperation is required. The right to object to the unfulfilled contract is reserved.
2. If the customer becomes in default of acceptance or he culpably infringes upon other duties to cooperate, FTB is entitled to demand from the customer the reimbursement of any damages that have arisen due to this and any additional expenses. If these conditions have been fulfilled, the risk of accidental transfer or accidental degradation of the delivery or service passes to the customer at the time at which the customer becomes in default of acceptance. Further claims of FTB remain expressly reserved.
3. FTB is only liable for delayed performance in cases of intent or gross negligence.
4. In other cases of default, the liability of FTB for compensation in addition to performance will be limited to 10% and for compensation instead of performance including the reimbursement of fruitless expenditures up to a total of 20% of the value of the delivery. Further claims of the customer are excluded, even after expiration of a performance deadline set for the seller.

The restriction does not apply to culpable infringement against essential contractual obligations. The compensation claim for culpable infringement against essential contractual obligations is, however, limited to contractually-typical and foreseeable damage, where no damage according to clause 1 of this paragraph also exists.

5. FTB is liable according to the statutory regulations for personal injury, bodily harm or damage to health caused by minor negligence. Other statutory claims and rights of the customer due to default in delivery remain unaffected.

V. Retention of title

1. Until complete payment of all outstanding receivables from the supply contract, FTB remains the owner of the supplied goods. The proprietary rights only transfer to the customer when all receivables from the business relationship are paid in full, even if FTB does not invoke this for subsequent deliveries.
2. The customer is obliged to handle the purchased item with care, even while ownership has not yet passed to him. He is to immediately notify FTB in writing if the supplied goods are seized or subject to other interventions by third parties. Insofar as the third party is not in a position to reimburse us the court and out-of-court costs of a third-party action in accordance with section 771 of the German Civil Process Order (ZPO), the customer shall be liable for costs disbursed by FTB.
3. The customer is entitled to resell the goods subject to reservation of ownership in the normal course of business. Even now, the customer assigns to FTB the claim against his client from the resale amounting to the agreed final invoice amount including VAT. This assignment is regardless of whether the purchased item has been re-sold without or after processing. The customer remains entitled to collect the receivables even after assignment. The authority of FTB to collect the receivables itself remains unaffected by this. The receivables are only collected by FTB itself when the customer does not pay after a second reminder and becomes in default of payment or an applicable to open bankruptcy proceedings is filed or payments have ceased.
4. The processing or alteration of the purchased item by the customer always takes place in the name of and on behalf of FTB. In the event of processing, the expectant right of the customer to the purchased item continues for the altered item. If the purchased item is processed with other items not belonging to FTB, FTB shall acquire joint ownership of the new item in relation to the objective value of the purchased item to the other processed items at the time of processing. The same shall apply in the event of any mixing. If mixing takes place in such a manner that the item of the customer is to be viewed as the main item, it is considered agreed that the customer transfers joint ownership proportionately to FTB and holds for FTB the sole or joint ownership arising from this. To secure the receivables of FTB against the customer, the customer also transfers to FTB those receivables that arise for him through the joining of the goods subject to reservation of title with an item of property against a third party. FTB already accepts this transfer now. FTB is obliged to release securities to which it is entitled by way of guarantee at the request of the customer insofar as the value of the securities exceeds the receivables to be secured by more than 20%.

VI. Warranty claims

1. The exercising of warranty rights by the customer requires that he has fulfilled his examination and notification obligations in accordance with section 377 of the German Commercial Code (HGB) in the proper manner. The warranty period begins with the completed delivery of the goods supplied by FTB to the customer. Its duration is determined based on the relevant statutory regulations.
2. The customer is obliged to examine the goods supplied by FTB immediately after he has taken receipt of them and, if he identifies defects, to report these immediately, i.e. at the latest 2 days after receipt of the goods, to FTB.
3. The customer can only exercise warranty rights if he immediately inspects the goods and reports the defects to FTB at the latest within the period of 2 days. A later examination or a later report of defects leads to the loss of the warranty rights (section 377 German Commercial Code [HGB]).
4. If, despite taking all due care, the supplied goods display a defect that already existed at the time of passing of risk, FTB will repair the goods or provide replacement goods at FTB's option, provided that the notification of defects is received in due time. FTB has the opportunity to provide supplementary performance in an appropriate period of time. The rectification is only deemed to have failed after the second unsuccessful attempt.
5. Claims for defects do not exist in the event of only insignificant deviation of the delivery from the agreed characteristics, only insignificant impairment of usability, normal wear and tear and for damage arising after the passing of risk as a result of improper or negligent handling by the customer, excessive demands, unsuitable equipment, defective assembly or installation work, or due to particular external influences that are not provided for according to the contract and were not to be expected. If improper maintenance work or amendments are undertaken by the customer or third parties, no warranty claims exist for this or for any resultant consequences of this.
6. Claims of the customer due to expenses required for the purpose of supplementary performance, in particular transport, road and material costs, are excluded, insofar as the expenses increase because the goods supplied by FTB were subsequently taken to a location other than the site of the customer, unless the transfer corresponds to its proper use.
7. Recourse claims of the customer against FTB exist only to the extent that the customer has made no agreements with his buyer that go beyond the statutory mandatory claims for defects. Furthermore, V. para. 4 applies accordingly to the scope of the recourse claim of the customer against FTB.

VII. Miscellaneous

1. All legal relationships governed by these GTC are subject to the law of the Federal Republic of Germany with the exception of the United Nations Convention on contracts for the International Sale of Goods (CISG) and any other regulation that would lead to the application of any foreign law.
2. If the client is a merchant, a corporate body under public law, constitutes special assets governed by public law or is without domestic legal domicile, the exclusive venue for all disputes arising out of or in connection with this contractual relationship shall be Würzburg. The same applies if the customer does not have a general court of jurisdiction in the country, the customer moves his or her domicile or habitual residence after conclusion of contract, or if the domicile or habitual residence is unknown at the time the claim is asserted.
3. All agreements made between the Parties for the purpose of fulfilling this contract are set down in writing in this contract. Verbal agreements shall be ineffective. Amendments to the agreement made must be made in writing in order to be effective (II para. 1)
4. Should individual provisions in this contract be or become invalid or contain a loophole, the remaining agreement shall otherwise remain unaffected by this. The parties commit, in place of the invalid provisions, to come to a legally permitted agreement that best approximates the economically intended purpose of the invalid provision and fills this loophole.

Last updated 01/01/2022, FPB
Changes and errors excepted.