



**STANDARD TERMS AND CONDITIONS OF SUPPLY OF  
Feinmetall GmbH  
for use in business transactions with entrepreneurs**

**1 General Provisions**

All of our supplies and services are based on these Terms and Conditions and on any separate contractual agreements reached. Terms of purchase of the customer deviating herefrom do not become part of the contract even by virtue of an order acceptance. A contract becomes effective upon our written order confirmation unless otherwise agreed.

We reserve the copyright and title in and to samples, cost estimates, drawings and similar information whether tangible or intangible or in electronic form; they may not be disclosed to third parties.

**2 Prices and Terms of Payment**

Our prices are ex works excluding packaging, plus sales tax at the statutory rate.

The date for payment is 30 days after receipt of the invoice. If payment is effected within 14 days of the invoice date, we grant a discount of 2%, provided that our invoices for all previous supplies have been paid in full. The deadline is deemed complied with if the amount due is credited punctually to one of our accounts without reservation.

Compensation for services is payable without any deductions immediately after receipt of the invoice and acceptance.

The legal consequences of the customer's default of payment are governed by the provisions of law, in particular by the provisions set forth in Section 288 German Civil Code (BGB).

We are entitled to charge an advance payment in a reasonable amount for orders with a net value of over € 25,000 and orders for equipment to be manufactured in accordance with customer-specific requirements.

The customer may only offset those claims which are undisputed or recognised by final and binding judgment.

**3 Delivery Date**

The precondition for our compliance with agreed delivery dates is that the customer has provided punctually all of the documents to be supplied by the customer, the necessary approvals and clearances, in particular including plans, and has adhered to the terms of payment agreed and other obligations of the customer. If these preconditions are not met in

good time, the delivery dates shall be extended accordingly; this does not apply if we are accountable for the delay. If non-compliance with the dates is due to force majeure, the dates shall be reasonably extended.

If we are in default, the customer may demand compensation in the amount of 0.6% of the price of that part of the supplies which cannot be put into pertinent operation on account of the default, for each complete week of delay, but not exceeding 6% of this price in total - provided that he establishes credibly that he incurred damage as a result.

Compensation claims by the customer exceeding the aforementioned limits are excluded in all cases of delayed delivery also following expiry of any extension to the delivery date granted to us. This does not apply insofar as there is mandatory liability in the case of deliberate acts, gross negligence or on account of physical injury; no change to the burden of proof to the detriment of the customer is connected herewith. The customer's statutory right to terminate the contract remains unaffected.

#### **4 Passing of Risk**

Risk passes to the customer when the delivery leaves our factory. At the customer's request we insure the products against any transport damage or loss.

#### **5 Defects as to Quality**

We are liable as follows for defects as to quality:

1. All of those parts or services showing a defect as to quality during the limitation period - irrespective of their period of operation - shall be, at our election, either repaired, substituted by a new delivery or rendered a new free of charge, provided that the cause of such defect already existed at the time of passing of risk. Products which are subject to wear and tear dependent on the intensity and duration of their use, such as contact probes or probe cards are excluded from the warranty. This applies in particular to damage and malfunctions caused by normal wear and tear or as a result of non-compliance with instructions on the handling, maintenance and care of the products.
2. Claims on account of defects as to quality become time-barred after a limitation period of 12 months. The term starts to run upon the passing of risk. The foregoing provisions do not apply insofar as longer periods are mandatory by law.

Otherwise claims on account of defects as to quality become time-barred after a limitation period of 12 months. The term starts to run on upon the passing of risk. The foregoing provisions do not apply insofar as longer periods are mandatory by law.

3. The customer must notify us in writing without delay of any defects as to quality.
4. We must initially always be given the opportunity to effect supplementary performance within a reasonable period of time.

5. If such supplementary performance is abortive, the customer can, without prejudice to any claims for compensation, terminate the contract or reduce the amount of remuneration. The customer may not claim compensation for wasted expenditure.
6. No claims may be asserted on account of defects as to quality in case of an only minor deviation from the agreed quality, in case of only minor impairment to use, natural wear and tear or damage arising after the passing of risk as a result of faulty or negligent treatment, excessive strain, unsuitable operating means or due to special external influences which were not assumed under the terms of the contract. If the customer or a third party carries out improper alterations or repair work, no claims may be asserted on account of defects either, neither with respect to such alterations or repair work or with respect to the consequences ensuing therefrom.
7. The customer's recourse claims against us exist only insofar as the customer has not reached any agreements with his customers exceeding the statutory claims on account of defects.
8. In all other respects Section 7 (Other Claims for Compensation) applies to claims for compensation. Any further or other claims on account of a defect as to quality raised by the customer against us or our agents employed in the performance of an obligation other than those governed by this provision are excluded.

## **6 Impossibility, Adjusting the Contract**

Insofar as supply is impossible, the customer has the right to claim compensation unless we are not accountable for the impossibility. The customer's claim to compensation is limited, however, to 10% of the value of that part of the delivery which cannot be put into pertinent operation on account of the impossibility. This restriction does not apply insofar as there is mandatory liability in case of deliberate acts, gross negligence or physical injury; no change to the burden of proof to the detriment of the customer is connected herewith. The customer's statutory right to terminate the contract remains unaffected.

In case of temporary impossibility Section 3 (Delivery Dates; Default) shall apply.

## **7 Other Claims for Compensation**

Claims for compensation by the customer, irrespective of the legal basis thereof, in particular on account of a breach of obligations based on the contractual relationship or tort, are excluded.

This does not apply insofar as there is mandatory liability, for example pursuant to the German Product Liability Act, in case of deliberate acts, gross negligence, physical injury, on account of the assumption of a guarantee for the existence of a quality or on account of a breach of material contractual obligations. Compensation for a breach of material contractual obligations is, however, limited to the damage foreseeable for the type of contract, unless or to the extent that there is a deliberate act or gross negligence or liability for physical injury or on account of the

assumption of a guarantee for the existence of a quality. No change to the burden of proof to the detriment of the customer is connected with the foregoing provisions.

## **8 Retention of Title**

The products supplied by us (products subject to reserved title) remain our property pending performance of all claims to which we are entitled from the customer, based on the business relationship. Insofar as the value of all security rights to which we are entitled exceeds the amount of all secured claims by more than 20%, we shall, at the customer's request, release a respective part of the security rights. During the period of retention of title, the customer is not permitted to pledge or transfer the goods as security; the customer is only allowed to sell the goods on to resellers in the normal course of business and only subject to the condition that the reseller receives payment from its customer or makes the reservation that title is not transferred to its customer until its customer has performed its payment obligations.

The customer must notify us without delay in case of any seizures, attachments or other dispositions or attacks by third parties.

In the event of a breach of duty by the customer, in particular in case of default of payment, we have the right to terminate the contract and recover the goods; the customer is obliged to surrender the goods. The recovery or assertion of the retention of title does not require any termination by us; these actions or the seizure by us of the products subject to reserved title does not constitute a termination of the contract unless we explicitly declared that this is the case.

## **9 Third Party Industrial Property Rights**

If supplies are effected on the basis of drawings or other data from the customer and if third party industrial property rights are infringed as a result, the customer shall indemnify us against all claims.

## **10 Jurisdiction and Applicable Law**

If the customer is a businessman, the courts with jurisdiction at our registered office shall have sole jurisdiction and venue. We are, however, also entitled to take legal action at the customer's registered office.

The contractual relationships are governed by German substantive law excluding the United Nations Convention on the International Sale of Goods (CISG).

## **11 Binding Agreement**

In the event that individual elements of the contract are legally ineffective, the remainder of the contract shall remain binding. This shall not apply if upholding the contract would constitute an unreasonable hardship for one of the parties.