

# General Terms and Conditions

## I. General Terms and Conditions

1. These General Terms of Delivery shall solely apply to businesses according to the spirit of §14 of the Civil German Code. The extent of the supplies or services (herein referred to as "Supplies") shall be defined through the written stipulations signed by both parties. General Terms and Conditions or Purchase Terms of the Purchaser shall apply only where explicitly accepted and approved in writing by FLEXA. This also applies in the case of unconditional performance of contract.
2. All offers by FLEXA are subject to alteration. Also, technical descriptions and other information provided in quotations, product literature, and other agreements are not binding for the time being. All orders and agreements will become effective and binding upon written confirmation or upon dispatch of the goods.
3. For preliminary estimates, drawings, and other documents (herein referred to as "Documents"), FLEXA reserves all rights, rights of ownership, copyrights, and rights of exploitation without any limitation. The Documents must not be provided to a third party without prior approval by FLEXA.
4. Partial Supplies shall be admissible when acceptable for the Purchaser.
5. These General Terms of Delivery shall also apply to all future legal transactions between FLEXA and the Purchaser.

II. Technical Data, Dimensions, Quantities delivered, Tolerances. 1. Technical data such as dimensions, weights, performance numbers, illustrations, and drawings shall be binding only within the scope of common technical tolerances unless explicitly called binding.

2. If larger quantities of hoses are ordered and no linear measures are requested for the individual hoses, the respective linear measure is up to FLEXA.
3. In the case of orders for larger quantities and tailor-made products, FLEXA reserves the right for excessive and short deliveries of 10%. FLEXA reserves the right for a length tolerance of 5% upon delivery of hoses in measured fixed lengths unless lengths in compressed dimensions are ordered.
4. For all hoses, up to 20% of the quantities ordered can be delivered in cut or non-linear ring lengths due to production-related reasons, if required.
5. All metal hoses will be charged on the basis of extended length. Any other tolerances as well as particular technical data will be stated in the catalogues.

## III. Prices and Terms of Payment

1. Prices shall be quoted ex works (EXW). They exclude packing and value-added tax (VAT) payable under the applicable law.
2. Payments shall be made free at FLEXA's paying office.
3. The Purchaser shall pay the invoice amount for the Supplies without any reductions to FLEXA within 10 days after receipt of the invoice unless stipulated to the contrary.
4. If the Purchaser fails to fulfil his obligation to pay on the due date, regardless any other rights or claims, FLEXA shall be entitled to:
  - a.) terminate the contract or suspend any further deliveries to the Purchaser; or
5. Brass and copper products made by FLEXA are calculated on the basis of the brass / copper quotations of 128 to 153 p for M5 58 I. Every 12,5 p higher (starting from 153) and lower (starting from 128) will result in a 5% surcharge and reduction respectively. The decisive quotation is the quotation of the date of the conclusion of the contract.
6. The Purchaser is entitled to set off only such claims which have been determined undisputed or legally binding.
7. If there are several amounts overdue for payment on the part of the Purchaser at the time, the due debt or the older debt among several debts has to be settled first unless the Purchaser has arranged for any redemption agreement.
8. Any deduction of prompt-payment discount is subject to prior written agreement. If there has been arranged for a prompt-payment discount agreement, the deduction of any such cash discount will not be applicable until any former debts have been redeemed.
9. Cheques and bills of exchange for payment purposes will be accepted by FLEXA only subject to prior agreement. Payment shall be regarded effected not before redemption. Possible discount charges and interest will have to be reimbursed for FLEXA.
10. If the Purchaser fails to keep to a deadline for payment, all accounts receivable – even accounts receivable due to current transactions – will be due for immediate payment unless the Purchaser provides for a security note of a bank. This also applies to the Purchaser if any composition proceedings, insolvency proceedings, or enforcement proceedings have been filed against the Purchaser's assets, or if a bill of exchange or cheque is protested against the Purchaser.

## IV. Retention of Title

1. The items of Supplies (Secured Goods) shall remain the property of FLEXA until each and every claim against the Purchaser to which FLEXA is entitled under this business relation has been duly satisfied. If the total value of all security rights of FLEXA exceeds the value of all secured claims by more than 20%, FLEXA shall release a corresponding part of 2.

For the duration of the retention of title, the Purchaser is prohibited the security rights on the Purchaser's request.

from giving the items of Supplies in pledge or as security, and resale shall be permissible only to resellers in the ordinary course of business and only on condition that the reseller receives payment from his customer or retains title so that the property is transferred to the customer only after fulfillment of his obligation to pay.

3. In the case of seizure or other acts of interventions by a third party, FLEXA shall be immediately informed thereof in writing by the Purchaser.
4. In cases of non-performance of contractual obligations by the Purchaser, especially in the case of a delay in payment, FLEXA shall be entitled to take back the goods, and the Purchaser shall be obliged to return the purchased goods. The taking back, the assertion of the retention of title, or the seizure of the Secured Goods by FLEXA does not mean termination of the contract except if expressly stated by FLEXA.
5. Processing or modifying our goods by the Purchaser has exclusively to take place at FLEXA's. In the case of combining FLEXA goods with non-FLEXA goods through processing, FLEXA shall be entitled to claim for a proportionate share in ownership based on the ratio of the total invoice amount for the FLEXA Secured Goods to the purchase price of the other goods charged at the point of time of combining FLEXA goods with the non-FLEXA goods. The new product will be subject to the agreements related to Secured Goods accordingly.

If the combined product consisting of FLEXA Secured Goods and other goods cannot be separated, FLEXA shall be entitled to claim for the proportionate share in ownership regarding the new product based on the ratio of the total invoice amount for the FLEXA Secured Goods to the purchase price of the other goods in the combined product charged at the point of time of the combination process of the goods. The Purchaser shall hold in custody sole ownership or part-ownership on behalf of FLEXA.

6. The Purchaser shall be entitled to resell FLEXA Secured Goods in the ordinary course of business. All claims resulting from such course of business against a third party shall herewith be transferred to FLEXA by the Purchaser beforehand according to the corresponding invoice value including VAT. Regardless such transfer of claims, the Purchaser shall be kept entitled to collect such claims. Upon request, the Purchaser has to announce to FLEXA the claims transferred and the corresponding debtors and to provide FLEXA with full information and all documents required for a collection of claim. Upon special request by FLEXA, the Purchaser shall inform the third-party debtor about the transfer of claim to FLEXA.

## V. Time for Delivery, Delay

1. Observance of the stipulated time for delivery is conditional upon the timely receipt of all documents, permits required, necessary releases, especially of plans to be provided by the Purchaser, as well as fulfillment of the agreed terms of payment and other obligations by the Purchaser. Unless these conditions are fulfilled on time, the time for delivery will be extended accordingly except where FLEXA is responsible for the particular delay.
2. If non-observance of the time for delivery is due to force majeure such as mobilization, war, riot, or similar events such as strike, lockout, or any other non-predictable or grave operational breakdowns, such time shall be extended accordingly.
3. If FLEXA is responsible for a delay in delivery, the Purchaser who can establish credibly that he suffered a loss from such delay may claim agreed compensation of 0.5% for every completed week of delay, but in no event shall the aggregate of such compensation exceed a total of 5% of the purchase price of that part of the Supplies which could not be put to the intended use due to the delay.
4. Purchaser's claims for compensation justified due to a delay in delivery and claims due to non-performance of services which exceed the limits as specified in Clause V. paragraph 3 above shall be excluded in all cases even after expiry of an extension of time that may have been granted to FLEXA. This exclusion shall not apply where in cases of willful misconduct, gross negligence, or any harm to life, body, or health there is a legally binding liability. No change in the burden of proof to the detriment of the Purchaser is involved. The Purchaser may cancel the contract within the framework of legal regulations only if the delay in delivery was caused by FLEXA.
5. Upon FLEXA's request, the Purchaser is committed to making a statement with a reasonable period of time whether he has canceled the contract due to the delay in delivery and / or he is going to claim compensation for the service or if he insists on delivery of the goods.
6. If, upon the Purchaser's request, dispatch or delivery are delayed for more than one month after readiness for dispatch has been announced, the Purchaser may be charged storage costs for each month thereafter to the amount of 0.5% of the price for the goods to be supplied, but in no event shall the aggregate storage charges exceed a total of 5% of the price. The contractual parties are at liberty to furnish proof of higher or lower storage costs.

## VI. Transfer of Risk

1. Risk of damage or of loss of the Supplies shall pass to the Purchaser a.) in the case of Supplies to be delivered otherwise than at FLEXA's premises, at the time of delivery or, if the Purchaser wrongfully fails to take

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as follows even in the case of delivery carriage paid: delivery of the Supplies, at the time when FLEXA has tendered delivery of the goods; b.) in the case of Supplies to be delivered at FLEXA's premises "ex works", Incoterms 1990, at the time when FLEXA notifies the Purchaser that the goods are available for collection.

## VII. Obligation to Accept Delivery

Deliveries, even with minor defects, have to be accepted by the Purchaser.

## VIII. Warranty

FLEXA shall be held liable for defects of quality as follows:

1. FLEXA shall, at his opinion and expense, repair, replace or newly provide any parts or services which are subject to any defect of quality within the period of limitation regardless the operating period of such parts or services, if the cause for such defect was already provided at the point of time of transfer of risk.
2. Warranty claims are subject to a limitation period of 12 (twelve) months. This does not apply for cases when legal regulations demand extended periods according to §438, para. 1, no. 2 (buildings and buildings-related items), §479 para. 1 (claim under a right of recourse), and §634a para. 1 no. 2 German Civil Code (structural defects).
3. The Purchaser has to notify FLEXA about any such defects of quality in writing immediately.
4. In the case of notification of defects, Purchaser's payments may be withheld in reasonable proportion of the noticed defect. The Purchaser can withhold payments only if the legitimacy of the asserted complaint can be established beyond doubt. If legitimacy of the complaint cannot be established, FLEXA shall be entitled to claim compensation from the Purchaser for the expenses incurred.
5. FLEXA shall first be given adequate time and opportunity to remedy the defect.
6. If the defect fails to be remedied, the Purchaser shall have the right to cancel the contract or to reduce the purchase price. This cancellation or reduction does not affect any other possible claims for compensation as stated in Clause XI. below.
7. Warranty does not cover minor discrepancies in agreed quality, insignificant reduction of operability, natural wear and tear, or damage arising after the transfer of risk due to faulty or negligent handling, excessive strain, unsuitable equipment, defective workmanship, particular external influences not assumed under the contract, or non-reproducible software errors. Warranty does not cover any modifications or repairs carried out improperly by the Purchaser or by a third party.
8. Any Purchaser's claims concerning expenses, especially transportation-related costs, labour costs, travelling expenses, and material-related costs, required due to the remedy of defects shall be excluded if such expenses will incur as the subject-matter of the delivery has been forwarded to a place other than the Purchaser's branch.
9. Any legal claim under a right of recourse of the Purchaser against FLEXA shall be effective only when the Purchaser has not agreed with his customer on any terms and conditions exceeding the legal claims due to a defect of quality. Furthermore, for the extent of a purchaser's claim under a right of recourse against FLEXA, Clause VIII. paragraph 8 shall be effective.
10. For any compensation claims, Clause XI. (Further Liability) shall be effective. Except as provided in this Clause VIII., any other warranty claims of the Purchaser against FLEXA and against FLEXA's agent shall be excluded.

## IX. Industrial Property Rights and Copyright; Legal imperfection in title

1. FLEXA is committed to providing Supplies free of any industrial property rights and copyright of a third party (hereinafter called Property Rights) only in the country of the place of delivery unless stipulated to the contrary. If a third party, because of an infringement of Property Rights by products furnished by FLEXA and used in conformity with this contract, asserts legitimate claims against the Purchaser, FLEXA shall be held liable to the Purchaser within the period as stipulated in Clause VIII. paragraph 2 above as follows:
  - a.) At his own option and expense, FLEXA shall either obtain a right to use the Supplies, modify the Supplies so as not to infringe the Property Rights, or replace the Supplies. If this is not feasible to FLEXA on acceptable terms, the Purchaser is entitled to apply the legal rights of cancellation and the legal rights to a reduction in price due to a defect in the article purchased.
  - b.) FLEXA's obligation to pay damages is subject to Clause XI. below.
  - c.) FLEXA's aforesaid obligations shall exist only on condition that the Purchaser immediately notifies FLEXA in writing of the claims asserted by a third party, that he does not acknowledge an infringement, and that all countermeasures and settlement negotiations are reserved to FLEXA. If the Purchaser stops using the product to reduce damage or for other important reasons, he shall be obliged to inform the third party that the suspended use does not mean acknowledgement of an infringement of Property Rights.
2. Claims of the Purchaser shall be excluded if the Purchaser is responsible for an infringement of Property Rights.
3. Claims of the Purchaser shall also be excluded if the infringement of Property Rights was caused by specific demands of the Purchaser, by a

use of the product not foreseeable by FLEXA, or by the product being altered by the Purchaser or being used together with products not provided by FLEXA.

4. In the case of any infringement of Property Rights concerning the claims of the Purchaser as stipulated in Clause IX. paragraph 1, a) the agreements stipulated in Clause VIII. paragraphs 4, 5, and 9 shall be effective accordingly.

5. In the case of other legal imperfection in title, the agreements of Clause VIII. shall be effective accordingly.

6. Further claims or any other claims regarding legal imperfection in title as those stated in this Clause IX. of the Purchaser against FLEXA or against FLEXA's agent shall be excluded.

## X. Impossibility of Performance, Contract Adaption

1. If it is impossible for FLEXA to carry out the Supplies for reasons for which it is responsible, the Purchaser shall be entitled to claim damages instead of the service. However, the Purchaser's claim for damages shall be limited to 10% of the value of that part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This shall not apply where in cases of willful misconduct, of gross negligence, or of harm to life, body, or health, there is a legally binding liability. No change in the burden of proof to the detriment of the Purchaser shall be involved, and the Purchaser's right to terminate the contract shall remain unaffected.
2. Where unforeseeable events as described in Clause V, paragraph 2 substantially change the economic importance or the contents of the Supplies or considerably affect FLEXA's business, the contract shall be adapted accordingly with due regard to the principle of good faith. Where this is economically not reasonable, FLEXA shall have the right to terminate the contract. If FLEXA intends to make use of this right of termination, FLEXA shall notify the Purchaser in writing immediately after becoming aware of the significance of the event. This shall apply even where at first an extension of the delivery time had been agreed with the Purchaser.

## XI. Further Liability

1. Any possible application-related advice shall be given by FLEXA to the best of its knowledge and shall not liberate the Purchaser from checking applicability of such advice regarding the intended procedures and purposes. Responsibility concerning suitability and intended applicability of the FLEXA products is upon the Purchaser. Any liability of FLEXA in conjunction with such application-related advice given by FLEXA shall be excluded.
2. Any claims for damages of the Purchaser (hereinafter referred to as Claims) regardless of whether they are based on any violation of obligations resulting from the relationship under the law of obligations and from unauthorized action or on any other legal reasons shall be excluded.
3. This exclusion shall not apply where e.g. under the product liability law or in cases of willful misconduct or of gross negligence, due to harm to life, body, or health, or due to the fundamental non-performance of contractual obligations there is a legally binding liability. However, liability for damages arising from the fundamental non-performance of contractual obligations shall be limited to the foreseeable damage normally covered by the contract except in cases of willful misconduct, gross negligence, or harm to life, body, or health. This limitation does not imply any change of the burden of proof to the detriment of the Purchaser.
4. If the Purchaser is entitled to claim for damages according to this Clause XI., such claims will be subject to limitation according to the period of limitation for claims due to defects of quality as stated in Clause VIII. paragraph 2.

## XII. Place of Jurisdiction and Applicable Law

1. If the Purchaser is a businessman, the place of jurisdiction for all disputes arising directly or indirectly out of the contract shall be the place of FLEXA's premises. However, FLEXA shall also be entitled to file an action at the place of the Purchaser's premises.
2. All contractual relations shall be governed by German Law not including the United Nations Conventions on Contracts for the International Sale of Goods (CISG).

## XIII. Final Terms

1. If any part of this contract becomes invalid or ineffective for some reason, the rest of this contract shall remain fully effective and shall not be affected by this partial ineffectiveness. The part fully or partially ineffective shall be substituted by an agreement which comes closest to the economic purpose of the ineffective part.
2. All rights of the Purchaser arising from the relationship under the law of obligations are non-transferable.

FLEXA GmbH & Co Produktion und Vertrieb KG, Sitz: Hanau  
Registergericht: AG Hanau, HRA 4421

Persönlich haftende Gesellschafterin FLEXA Management GmbH  
Sitz: Hanau, Registergericht: AG Hanau, HRB 7145

Geschäftsführer: Dipl.-Kfm. Markus Stenger

Errors, misprints and technical modifications excepted.

