

# General Terms and Conditions of Service and Supply of Fabmatics GmbH

Preliminary note: Individual contractual provisions take precedence over these General Terms and Conditions.

## §1 General Provisions

1. These General Terms and Conditions of Service and Supply (hereinafter "Terms of Supply") of Fabmatics GmbH (hereinafter "Fabmatics") apply to all contracts of Fabmatics with entrepreneurs as clients in business dealings, with public legal entities or with special funds under public law (hereinafter "the Client") regarding goods and services to be provided by Fabmatics under contracts for sale, contracts for services, and contracts for work and materials (hereinafter collectively referred to as "Goods and Services" unless otherwise designated). These Terms of Supply will also be regarded as a master agreement for all future contracts with the Client, even if they are not expressly referred to or agreed upon again.
2. Any and all terms of the Client that conflict with or deviate from these Terms of Supply or from applicable legal provisions are hereby rejected by Fabmatics. Such terms are only binding if Fabmatics has expressly consented, in writing, to their applicability. This provision applies even if Fabmatics delivers goods and services to the Client without reservations, despite being aware of provisions of the Client conflicting with or deviating from these Terms of Supply or from applicable legal provisions.

## §2 Contract, Documents and Software

1. Any order by the Client that can be constituted as an offer to enter into a contract may be accepted by Fabmatics within two (2) weeks by sending an order confirmation to the Client. If the Client does not receive the order confirmation in a timely manner, the Client will notify Fabmatics of this situation immediately.
2. Quotes made by Fabmatics are made without engagement and are non-binding, unless they are expressly designated as binding. Upon acceptance by the Client, the content and scope of the contract will be determined in the written order confirmation from Fabmatics.
3. Incoterms 2010 will apply for purposes of interpreting trade terms.
4. Subject to the agreed scope of delivery, Fabmatics unconditionally reserves its proprietary rights, rights of use, designs, patents, trademarks, other industrial property rights, as well as copyrights (hereinafter "proprietary rights") regarding any cost estimates, drawings (e.g., technical drawings concerning the construction or manufacture of the goods), documentation and other records of Fabmatics, e.g., regarding the Client's project and preliminary studies (hereinafter "Documents"). The Client is obligated to maintain the confidentiality of any and all Documents received. The Documents must not be reproduced or made available to any third party without the prior consent of Fabmatics. If Fabmatics and the Client effectively enter into a contract, Fabmatics's consent will be deemed to have been given for reproductions that are required in order to enable the Client to use the goods in accordance with the contract. If Fabmatics and the Client fail to enter into a contract or the contract is terminated or rescinded, the documents must be returned to Fabmatics immediately upon request.
5. The Client has a non-exclusive right to use standard software with the agreed features in unaltered form on the agreed articles. To the extent that software is developed especially for the Client, the Client has the exclusive right to use the software with the agreed features in unaltered form on the agreed articles. However, Fabmatics also retains the right to use the software (jointly) free of charge and to utilize the underlying ideas and concepts. Use of the software (standard software, firmware and software modules) on articles other than those agreed upon requires the prior written consent of Fabmatics, unless, because of a defect in the agreed article, the Client uses the software on alternate equipment to the extent agreed upon. The Client shall comply with the license terms of the respective software. Unless otherwise agreed, the software will be provided exclusively in machine-executable form (object code).

## §3 Prices and Payment Terms

1. Unless otherwise agreed, Fabmatics's prices are "ex works" in accordance with Incoterms 2010, in addition to packaging, freight, insurance and other incidental expenses, as well as the legal VAT applicable on the invoicing date. For international deliveries, all taxes, customs duties and other public charges to be paid by Fabmatics abroad must be reimbursed by the Client.
2. Unless otherwise agreed, incidental expenses, such as travel and lodging expenses, per diems, loading times and expenses for transporting tools and personal luggage, as well as additional charges for overtime, holiday and Sunday work, are not included in the agreed prices and will be invoiced separately. The same applies to waiting times, delays and additional travel for which Fabmatics is not responsible and to any goods and services that are not included in the agreed content and scope of delivery but are nevertheless rendered by Fabmatics.
3. Unless otherwise agreed, payment claims of Fabmatics are due net (in full) immediately upon receipt of the respective invoice. Bank charges and transaction fees shall be borne by the Client. The date of receipt by Fabmatics will control for purposes of determining whether a payment is received in a timely manner.
4. In the event of late payment by the Client, interest will be charged at the prevailing bank rates for overdraft facilities or at the rate prescribed by law, whichever is higher.
5. In the event of late payment by the Client, Fabmatics has the right to accelerate the maturity of all payment claims arising from the relevant contract with this Client or to demand appropriate security interests for such claims. The same applies if Fabmatics's claims are placed at risk by a significant decline in the Client's credit rating. In such cases, Fabmatics also has the right to withhold any outstanding Goods and Services unless they are paid for in advance or unless an appropriate security is furnished.

# General Terms and Conditions of Service and Supply of Fabmatics GmbH

6. The Client is entitled to set-off or retention only insofar as its counterclaims are undisputed or if they have been finally adjudicated.

## §4 Terms of Delivery

1. Unless otherwise expressly agreed, delivery is "ex works" in accordance with Incoterms 2010.
2. Terms of delivery are subject to Fabmatics ability to obtain all the relevant materials from its own supplier in a timely manner. Likewise, delivery is subject to availability.
3. The agreed delivery dates are subject to timely receipt of all documents, required permits and releases, including but not limited to plans, to be supplied by the Client, and to the Client's compliance with the agreed payment terms and other duties of cooperation. If the Client fails to fulfill its aforementioned duties in a timely manner, the respective agreed delivery date will be deferred correspondingly. Fabmatics reserves the right to assert further statutory rights and defenses.
4. Delivery dates are met if the goods are dispatched or if the Client is notified that the goods are ready for dispatch. With respect to setup, assembly or startup by Fabmatics, the agreed dates are met upon the corresponding completion.
5. Insofar as this is reasonable for the Client, Fabmatics has the right to make partial deliveries and other partial performances regarding self-contained parts (hereinafter "partial deliveries") and may invoice same separately. The agreed payment periods will run separately for each partial invoice.
6. If any event of force majeure, including but not limited to war, warlike conditions, natural disasters, accidents, labor disputes, arbitrary acts of an official or political nature, shortages of raw materials or energy, or significant interruptions of operations that are not temporary and for which Fabmatics is not at fault, prevents Fabmatics from making delivery, the dates scheduled for making the respective deliveries will be deferred accordingly. The Client is obligated to negotiate with Fabmatics concerning a corresponding adjustment of the contract with respect to the remaining terms of same, including but not limited to the price. Where a contractual adjustment on account of force majeure is not economically justifiable, both Parties have the right to cancel the contract.
7. In the event of a delay in delivery, Fabmatics liability under the following terms and conditions is subject to the applicable legal provisions. If Fabmatics is in default, the Client's right to compensation for the delay in delivery is limited to 0.5% of the net value of the order for each full week of delay, not to exceed a total of 5% of the net value of the order. This limitation does not apply in case of wrongful intent or gross negligence on the part of Fabmatics or in case of an injury to life, limb or health culpably caused by Fabmatics. Subject to applicable law, the Client may only cancel the contract if Fabmatics is at fault for the delay in delivery. The foregoing provisions will not imply any shift in the burden of proof to the detriment of the Client. Upon request of Fabmatics, the Client is obligated to notify same within a reasonable period as to whether the Client is canceling the contract or demands that delivery be made.
8. If dispatch of the goods is postponed by request of the Client, any storage by Fabmatics will occur at the expense and risk of the Client starting from the date of notice of readiness for dispatch. Unless otherwise agreed, and subject to other rights of Fabmatics, the Client may be charged a storage fee of 0.5% of the net value of the order for the goods for each month of storage or fraction thereof, not to exceed a total of 5% of the net value of the order. If the Client is at fault for a delay in dispatch of the goods and the Client is in default, Fabmatics has the right to claim a storage fee of 0.5% of the net value of the order for each month of storage or fraction thereof, not to exceed 5% of the net value of the order for the goods, as lump-sum compensation. Fabmatics reserves the right to prove any additional loss; the Client reserves the right to prove that Fabmatics has not incurred a loss or that the loss incurred by it is of a lesser degree than that asserted.

## §5 Packaging, Dispatch and Passage of Risk

1. The type of packaging will normally be determined by Fabmatics. Fabmatics will endeavor to take into account the Client's requests concerning the mode and route of dispatch. Any additional expenses thus incurred will be borne by the Client, even if freight paid has been agreed upon.
2. If the goods are damaged or lost in transit, the Client must immediately request from the carrier a report concerning the cause of loss.
3. Even in case of freight paid and partial deliveries, the risk passes to the Client as follows:
  - a) for goods not requiring setup, assembly or startup, when the goods are dispatched or picked up,
  - b) for contracted services involving setup, assembly or startup, on the respective date of takeover at the Client's facility or, where so agreed, upon acceptance.
4. The risk likewise passes to the Client if the Client is at fault for a delay in dispatch, setup, assembly, startup or acceptance or otherwise fails to accept the Goods and Services in a timely manner.

## §6 Duties of the Client, Setup, Assembly and Startup, Taking Delivery, Acceptance

1. The Client is obligated to provide Fabmatics with a sufficient description of the actual conditions under which the Goods and Services are to be used. In particular, the Client must provide, in a timely manner or upon request by Fabmatics, the information required for carrying out the delivery and must inform Fabmatics of the level of precision with which the Goods and Services to be supplied are to operate and the

# General Terms and Conditions of Service and Supply of Fabmatics GmbH

environmental conditions under which they are to be used. If, because of a breach of these duties, the Goods and Services prove unsuitable for the use specified in the contract through no fault of Fabmatics, the Client has no right to cancel the contract, demand a reduction in the price of the Goods and Services, or claim damages.

2. The Client is responsible for transportation within its facility, particularly for preparing and making available suitable means of transportation and hoisting devices.
3. The Client is obligated to cooperate with Fabmatics to the extent necessary. In particular, the Client must, at its own expense, acquire and provide, in a timely manner, the following:
  - all materials and articles necessary for the assembly and startup, such as hoisting devices and other equipment, as well as lubricants,
  - electricity and water at the place of use, including connections, heating and lighting, each in accordance with the installation instructions of Fabmatics,
  - all preliminary construction and assembly work, including the construction and marking of suitable access roads and leveling and clearing of access roads and workplaces,
  - additional materials and articles required for carrying out the delivery,
  - at the place of assembly: suitable dry and lockable rooms of sufficient size for the storage of machine parts, appliances, materials, tools, and the like, and for the assembly personnel: suitable workrooms and lounges, including appropriate sanitary facilities,
  - any additional equipment not included in the agreed scope of delivery.
4. The Client must not withhold taking delivery or acceptance of Goods and Services because of non-material defects.
5. If the Client fails to take delivery of the Goods and Services in a timely manner or is at fault for breaching any of its duties of cooperation, Fabmatics has the right to demand compensation for any losses thus incurred by it, including any additional expenses, e.g., for additional time, labor or materials. Fabmatics reserves the right to assert other statutory rights and the defense of non-performance.
6. If the Parties have agreed to conduct an acceptance, such must be conducted promptly after notice of completion. The costs of the acceptance shall be borne by the Client. The Client must provide the conditions necessary for conducting the acceptance. If the Parties have agreed on special features and Fabmatics demands an acceptance, the Client must conduct such no later than within two weeks. If, through no fault of Fabmatics, the acceptance is not conducted in a timely or complete manner, the acceptance will be deemed to have been conducted after such has been requested in writing and a reasonable time has lapsed, provided that Fabmatics has made special reference to this consequence. In any case, the acceptance will take effect once the goods are put into operation. The foregoing provisions also apply accordingly to any partial deliveries and preliminary acceptance tests.

## §7 Defects of Quality

1. Defect claims of the Client require that the Client has duly fulfilled its duties to examine the goods and to notify Fabmatics of any defects in same in accordance with §377 of the German Commercial Code (HGB). This provision does not apply to contracts for services.
2. Warranty claims are excluded in case of non-material defects, normal wear and tear or damage resulting from faulty or negligent handling, excessive stress, unsuitable equipment, defective construction work or an unsuitable foundation, or in case of non-reproducible software errors. If inappropriate modifications or repair work is performed by the Client or a third party, the Client likewise has no warranty claims against Fabmatics for such modifications or repair work or for the consequences of same.
3. If a defect of quality exists at the time of passage of the risk, Fabmatics must initially be given the opportunity to cure the defect within a reasonable time. Cure will take place, at the option of Fabmatics, in the form of correction or re-delivery and/or new manufacture. If the cure proves unsuccessful, the Client may, without prejudice to any other rights it may have, cancel the contract or demand a reduction in the price of the Goods and Services.
4. Claims of the Client arising from expenses necessary for curing any defect, including but not limited to transportation, infrastructure, labor and materials costs, will not be accepted insofar as the expenses increase because the goods are subsequently transferred to a location other than the original place of performance, unless, in the opinion of both the Client and Fabmatics, such transfer is necessary in order to use the goods as specified in the contract.
5. Unless otherwise agreed, if the Client obtains advice from Fabmatics concerning processing options and applications for the goods or concerning technical issues, such advice is non-binding; any warranty rights against Fabmatics under these Terms of Supply are valid only insofar as the advice itself has caused a defect in the goods.
6. Any rights of recovery of the Client against Fabmatics pursuant to §478 of the German Civil Code (Recovery by the Contractor) will not apply if the Client has made warranties or has entered into agreements with its customer that go beyond the statutory warranty claims.
7. Claims for damages or for reimbursement of expenses are subject to §9. Claims of the Client against Fabmatics resulting from a defect of quality that are not covered by §7 or §9, as well as all other such claims, are excluded.

## §8 Proprietary Rights, Defects in Title

1. Unless otherwise agreed, Fabmatics is only obligated to supply the Goods and Services free of proprietary rights and copyrights of third parties in the place of delivery. If a third party brings legitimate claims against the Client because of an infringement of proprietary rights by

# General Terms and Conditions of Service and Supply of Fabmatics GmbH

Goods and Services provided by Fabmatics and used in accordance with the contract, Fabmatics is liable to the Client as follows:

- a) Fabmatics will, at its option and at its expense, secure a license for the respective Goods and Services, modify the Goods and Services such that the proprietary right is not infringed, or replace the Goods and Services. If this proves unsuccessful, the Client has the right to cancel the contract or to demand a reduction in the price of the Goods and Services as provided by statute.
  - b) Fabmatics liability for compensation is subject to §9.
  - c) The aforementioned liabilities of Fabmatics apply only insofar as the Client informs Fabmatics immediately, in writing, concerning the claims asserted by the third party, does not acknowledge any infringement, and Fabmatics reserves all rights to defend itself and to negotiate a settlement. If the Client ceases to use the Goods and Services in order to mitigate its damages or for other good cause, the Client must inform the third party that such cessation of use in no way implies any infringement of proprietary rights.
2. Claims of the Client are excluded if the Client is at fault for the infringement of the proprietary right. Claims of the Client are furthermore excluded if the infringement of the proprietary right results from special requirements of the Client, from a use that could not have been foreseen by Fabmatics, or because the Client alters the goods or combines it with products not supplied by Fabmatics.
  3. The provisions of §7 apply accordingly to any other infringement of proprietary rights. §7 likewise applies accordingly in case of other defects of title.
  4. Claims of the Client against Fabmatics other than or in addition to those governed in this §8 that arise from the infringement of a proprietary right or any other defect of title are excluded.

## §9 Claims for Damages

1. Fabmatics is not liable for damages or reimbursement of expenses, regardless of the legal basis, including but not limited to defects, breach of duties arising from the contractual relationship and tortious acts. This applies in particular, though not exclusively, to claims for damages arising from lost sales or profits, financing costs, down-time cost or loss of production. However, this exclusion of liability does not apply in the following cases:
  - a) in case of willful misconduct on the part of Fabmatics;
  - b) in case of gross negligence on the part of Fabmatics;
  - c) if the exclusion of liability conflicts with a guarantee made by Fabmatics;
  - d) if Fabmatics is at fault for injury to life, limb or health;
  - e) if Fabmatics is liable under the German Product Liability Act;
  - f) if Fabmatics is at fault for breaching a material contractual duty. In case of ordinary negligence, however, Fabmatics's liability in this respect is limited to compensation of typical, foreseeable losses, except where Fabmatics is liable for injury to life, limb or health. Material contractual duties are those whose fulfillment is essential for enabling the due performance of the contract and on whose observation the Client normally and properly relies.
2. The provisions of §4.7 take precedence in applying to damages resulting from delay and are not affected by the remaining provisions of this §9.
3. Insofar as Fabmatics liability under this §9 is limited or excluded, such limitation or exclusion also applies to the corresponding personal liability of its employees, agents and assistants, and legal representatives.
4. The foregoing provisions will not imply any shift in the burden of proof.

## §10 Limitations Periods

1. The limitations period for claims and rights arising from defects of supply, regardless of the legal basis, is one year. Notwithstanding this provision, claims and rights of the Client arising from defects are subject to the relevant statutory limitations period
  - a) in the case of §438 (1) no. 1 of the German Civil Code (BGB) (third-party rights *in rem*), §634a no. 1 (manufacture, maintenance or modification of an article, planning or supervisory work), work performed on a building, as defined in §438 (1) no. 2 and §634a (1) no. 2 BGB, and rights of recovery under §479 (1) BGB,
  - b) in case of fraudulent concealment of a defect, as well as in case of claims for damages, and
  - c) where Fabmatics is at fault for injury to life, limb or health, where claims are brought under the German Product Liability Act, and in case of breaches of duty caused by gross negligence or willful misconduct.
2. For claims and rights arising from a defect, particularly for claims for restitution resulting from a reduction in price or from cancellation, the limitations period begins, in the case of goods (including those requiring setup or assembly), upon delivery of the goods, and, in the case of other services, upon acceptance.
3. The limitations periods specified in §§10.1 and 10.2 above apply to all claims against Fabmatics arising from any defect, regardless of the legal basis for the claim, and, in particular, to claims arising from tortious acts and to claims for restitution in case of a reduction in price or in case of cancellation.
4. Correction or additional delivery, and/or new manufacture, are normally performed by Fabmatics as a courtesy but without acknowledging any legal duty to do so. An acknowledgement does not imply a recommencement of the limitations period unless Fabmatics expressly

# General Terms and Conditions of Service and Supply of Fabmatics GmbH

states otherwise to the Client. Barring an express acknowledgment, no new limitations period will begin to run upon correction, additional delivery and/or new manufacture. Otherwise, the foregoing is without prejudice to the applicable legal provisions concerning the suspension of the statute of limitations and the tolling of limitations periods.

5. For all other claims of the Client against Fabmatics, the regular limitations period is reduced to two years from the statutory start date of the limitations period.

## §11 Reservation of Title

1. Fabmatics reserves title to the goods until such time as the Client has satisfied all claims accruing to Fabmatics under its business relationship with the Client (hereinafter "Reserved Good"); where a current account relationship exists, this reservation will apply until the respective outstanding balance has been paid.
2. The Client is authorized to resell the Reserved Good in the ordinary course of business. However, the Client assigns to Fabmatics, effective immediately, any and all claims against third parties that accrue to the Client based on the resale of the Reserved Good, even in the case of processing, combination or mixing with other goods. Fabmatics accepts this assignment. The Client remains authorized to collect the claim until such authorization is revoked. However, Fabmatics has the right to revoke such authorization only if the Client has breached its duties under the contractual relationship. Once a petition in insolvency has been filed against the Client's assets, the Client no longer has the right to resell or use the Reserved Good or to collect the associated claim. This provision will apply until such time as the petition in insolvency has been withdrawn or finally rejected or until the insolvency proceeding has ended.
3. Any processing of the Reserved Good is for the benefit of Fabmatics as manufacturer within the meaning of §950 BGB. The processed good is considered a Reserved Good as referred to in §11.1. If the Reserved Good is combined or mixed with articles that are not the property of Fabmatics, Fabmatics will acquire co-ownership of the newly manufactured article in a share corresponding to the value of the Reserved Good to the value of the new article. If Fabmatics's right of ownership expires because of processing, combination or mixing, the Client assigns to Fabmatics, effective immediately, all ownership rights accruing to the Client in the new article to the extent of the objective value of the Reserved Good and will safeguard the new article, free of charge, for Fabmatics. Co-ownership rights of Fabmatics will be considered a Reserved Good as referred to in §11.1.
4. The Client is obligated to handle the Reserved Good with care; in particular, the Client must, at his own expense, insure the Reserved Good adequately, at its value as a new article, against losses caused by fire, water, and burglary. The Client authorizes Fabmatics, effective immediately, to assert any and all claims against the insurer on Fabmatics's own behalf. Where maintenance and inspection work is necessary, the Client must cause same to be performed in a timely manner and at its own expense.
5. In the event of attachment or other acts to gain possession by third parties, the Client must advise the third party of Fabmatics's ownership and notify Fabmatics of such acts immediately, in writing, so that Fabmatics can enforce its rights of ownership, particularly by bringing an action pursuant to §771 of the German Code of Civil Procedure (ZPO). Insofar as the third party is not in a position to refund to Fabmatics the court costs or other expenses incurred in this regard, the Client must refund such costs to Fabmatics.
6. Upon request by the Client, Fabmatics agrees, at its option, to release securities held by it, provided that their realizable value exceeds by 10% each claim that is to be secured.
7. If, for international deliveries in the importing country, certain measures are necessary in order to ensure the validity of the reservation of title referred to in the foregoing paragraphs or other rights of Fabmatics described therein, the Client must inform Fabmatics of this necessity and must take such measures at its own expense. If the laws of the importing country do not permit a reservation of title but do allow the seller to reserve other rights to the goods, Fabmatics may exercise all such rights. Insofar as equivalent security for Fabmatics's claims against the Client is not obtained thereby, the ordering party must, at its own expense, provide Fabmatics with other equivalent securities.

## §12 Confidentiality and Data Protection

The Client and Fabmatics agree to treat confidentially all knowledge of confidential information and trade secrets of the respective other party that is acquired in the course of performing the contract (hereinafter "Information") and to refrain from using such Information except in accordance with the contract. This provision does not apply to Information that a) is or becomes generally known or b) was already known to the respective recipient at the time of conclusion of the contract for reasons other than a violation of any confidentiality agreement or statutory provision. The foregoing obligations will remain in effect for a period of 10 years after the termination of the contract.

## §13 Place of Performance, Place of Jurisdiction, Governing Law

1. The place of performance for the supply of Goods and Services is the registered office of Fabmatics, unless otherwise agreed. The place of performance for other services is the place at which such services are to be performed. The place of performance for payments of the Client is the point of payment indicated in Fabmatics's invoice. The place of performance for cure is the same as the original place of performance of the supply of Goods and Services.
2. For any and all disputes arising, either directly or indirectly, from the contractual relationship between Fabmatics and the Client, the exclusive place of jurisdiction is the registered office of Fabmatics, provided that the Client is a merchant, a public legal entity, or a special fund under public law. However, Fabmatics also has the right to take legal action against the Client at its place of general jurisdiction or in

# **General Terms and Conditions of Service and Supply of Fabmatics GmbH**

any other court of competent jurisdiction.

3. The contract will be governed and interpreted exclusively in accordance with the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

## **§14 Writing Requirement, Savings Clause**

1. Neither a personal nor an electronic signature is needed for purposes of satisfying the writing requirement. Messages sent via fax, e-mail, or in other text formats will satisfy the writing requirement.
2. If any individual provision of the contract is invalid, this will not affect the validity of the remaining provisions of same. The Client and Fabmatics will cooperate in order to replace invalid provisions with valid provisions that are as consistent as possible with the invalid provisions.