

General Purchasing Conditions Fabmatics GmbH

1 Scope

1.1 For commercial transactions between you and Fabmatics GmbH, these General Purchasing Conditions apply to the current and all future contracts. Any additional obligations assumed by you leave the application of these General Purchasing Conditions unaffected.

1.2 These General Purchasing Conditions apply exclusively. We do not accept any terms and conditions differing from these Purchasing Conditions or from statutory provisions, unless agreed otherwise in writing. Your conflicting conditions shall not apply, even if Fabmatics GmbH has not objected to them explicitly or has accepted ordered goods without reservation.

2 Orders

2.1 An order from Fabmatics GmbH will be confirmed by you in writing and you will particularly emphasize any deviations, extensions, or restrictions as such. Any such deviations, extensions, or restrictions shall become binding only if confirmed in writing by Fabmatics GmbH.

2.2 You will submit any offers to Fabmatics GmbH free of charge. Fabmatics GmbH may accept your offer in writing within 2 weeks after you have submitted it. Until this period is expired, you cannot revoke your offer.

2.3 After the conclusion of the contract, Fabmatics GmbH has the right to change requirements regarding construction and implementation at any time against reimbursement of reasonable expenses incurred by you including a pro-rata profit.

3 Prices, Payments, and Invoices

3.1 The prices are fixed net prices free point of destination. They include all expenses and ancillary cost in connection with the deliveries and services to be provided by you, including, but not limited to, packaging, transport, unloading, insurance, and export clearance.

3.2 If an "ex works" price has been agreed explicitly, Fabmatics GmbH will bear only the lowest freight costs, unless Fabmatics GmbH has stipulated a specific mode of shipping for you.

3.3 Notwithstanding any further requirements, payments by Fabmatics GmbH will be effected after goods have been received in full and a proper invoice has been received within 14 days with a 3 % discount or within 30 days net. By the time the bank has received the wire transfer, the payment shall be considered to be effected. Banking fees and charges will be borne by you.

3.4 Invoices shall generally be submitted to Fabmatics GmbH in the form of a single copy; each invoice has to state the contract number, the order number, for each individual item the article number of Fabmatics GmbH, any project number, and your tax identification number. The applicable statutory value-added tax must be reported separately.

3.5 Payments by Fabmatics GmbH do not constitute any acknowledgement of the delivery or services as being in accordance with the contract. In the case of a defective or incomplete delivery or service, Fabmatics GmbH has the right, notwithstanding any other rights, to withhold a reasonable amount of payments in respect to claims from the business relationship without compensation until proper fulfillment.

3.6 It is not permitted to assign your claims against Fabmatics GmbH to third parties.

4 Deadlines and Delivery Delays

4.1 Agreed deadlines for deliveries and services are binding. Compliance with the agreed deadlines is one of your main obligations. If delays are to be expected or have occurred, you have to notify Fabmatics GmbH immediately in writing stating the cause and expected duration of the delay; this leaves any claims of Fabmatics GmbH because of the delayed delivery unaffected. A delivery prior to the agreed time is permitted only upon prior consent of Fabmatics GmbH.

4.2 In the case of delay in delivery, Fabmatics GmbH shall be entitled to the statutory rights Fabmatics GmbH particularly has the right to demand damages instead of performance and to rescind the contract, if a reasonable grace period has expired to no avail.

4.3 If you are in default with delivery, Fabmatics GmbH may demand a contractual penalty in an amount of 1% of the value of the respective goods being in delay or being defective per inchoate calendar week during which the relevant deadline is not met, however, only up to a maximum of 5% of the value of the respective goods being in delay or being defective. Fabmatics GmbH may assert the contractual penalty without explicit reservation upon acceptance of the delivery until the time of final payment. Fabmatics GmbH reserves the right to assert damages exceeding the contractual penalty incurred. However, any contractual penalties paid are to be credited.

4.4 You are only entitled to a set-off insofar as a counterclaim has been established with legally-binding effect, is ready for decision, undisputed, or acknowledged by Fabmatics GmbH. You are only entitled to a retention right under the same preconditions or if it originates from the same contractual relationship as the claim of Fabmatics GmbH and has a reasonable relation to it.

General Purchasing Conditions Fabmatics GmbH

5 Delivery, Transport, and Packaging

5.1 You are required to deliver goods, which comply in every respect with the contractually agreed quality and suitability for use as well as the respectively applicable product-law provisions and the state of the art of science and technology.

5.2 You are required to notify Fabmatics GmbH in writing, if your goods are not suitable for the use agreed under the contract without restrictions or if special safety provisions have to be observed when handling them or if this may lead to health, safety, or environmental risks.

5.3 You may subcontract an order in its entirety only upon the prior written consent of Fabmatics GmbH, unless this involves only the supply of parts commonly available on the market. Partial, excess, or short deliveries require written consent of Fabmatics GmbH.

5.4 Goods have to be safely packaged for transport. You have to mark the packaging so that the goods' content, quantity, lot/carton no., and weight (gross/net) are evident.

5.5 Goods are normally delivered in customary standard packaging. When using reusable packaging, you have to make the packaging available on a loan basis. The return shipment occurs at your cost and risk. If Fabmatics GmbH exceptionally agrees to bear the packaging costs, these have to be invoiced at the verifiable cost price.

5.6 Delivery occurs at your risk and at your cost. A delivery note in duplicate stating the respective order number of Fabmatics GmbH as well as the content by type and quantity, including the respective article number of Fabmatics GmbH as well as your article number, must be included with each delivery. In the case of machines, a technical documentation including operating and maintenance instructions must also be delivered free of charge. In the case of software products, you have to deliver the complete system technical and user documentation together with the delivery. In the case of programs created specifically for Fabmatics GmbH, the program must also be delivered in source code.

5.7 To the extent necessary, you have to provide the goods with a CE marking and an EC conformity declaration or an EC manufacturer's declaration must be included. Relevant certificates, inspection reports, and evidence also have to be delivered free of charge and risk analyses shall be delivered to Fabmatics GmbH upon request. Upon request, certificates of origin of your upstream suppliers must be presented to Fabmatics GmbH.

5.8 For deliveries and services on the business premises of Fabmatics GmbH or on third-party business premises, the General Rules for Outside Company Activities apply on the respective business premises as well as the information regarding safety, environmental and fire protection for outside persons, as amended.

6 Safety, Environmental Protection

6.1 You are liable for the compliance with all applicable safety and protection provisions, standards, statutes, directives (UVV, DIN EN, etc.) as well as orders of regulatory agencies, social insurance against occupational accidents, and other professional associations (VDE, VDI, etc.) from Germany, the EU, and in the country of destination for your goods. You have to ensure that the persons employed by you observe and comply with the relevant applicable safety and accident prevention provisions including the relevant applicable local provisions. They also have to observe all provisions regarding workplace and environmental protection; they also have to observe the requirements established insofar by the customer of Fabmatics GmbH.

6.2 No ozone-depleting substances such as FCKW/CFC, tetrachloromethane, 1.1.1 trichloroethane may be used in the production of the delivered goods and packaging.

6.3 You have to include protective devices required for compliance with safety and protection provisions in the delivery to Fabmatics GmbH free of charge.

7 Certificates of Origin, Import and Export Provisions, Customs Duties

7.1 Your EU value-added tax identification number (VAT-ID No.) must be stated with all deliveries and services.

7.2 You undertake, within the context of Council Regulation (EC) 1207/2001, to provide declarations and information required at your expense, permit inspections by customs authorities, and obtain required official confirmations. You will provide signed evidence of origin (e.g. certificates of origin, supplier declarations pursuant to Council Regulation (EC) 1207/2001) with all required information to Fabmatics GmbH. Subject to any differing agreements, you will complete the entire customs registration for the goods together with all formalities; in addition to delivering customs-cleared goods, the corresponding documents and certificates shall also be delivered to Fabmatics GmbH upon request.

7.3 In your order confirmation or invoice, you will mark items that require an export license or are subject to US re-export regulations.

7.4 Imported goods shall always be delivered duty paid, unless agreed otherwise. The delivery note shall state the goods number in accordance with the product classifications for the foreign trade statistic.

General Purchasing Conditions Fabmatics GmbH

8 Transfer of Risk, Acceptance, Ownership Rights

8.1 Irrespective of the agreed pricing, the risk passes in the case of delivery without installation or assembly upon receipt at the delivery address stated by Fabmatics GmbH and in the case of delivery with installation or assembly upon successful acceptance by Fabmatics GmbH. The commissioning or use does not replace the acceptance declaration of Fabmatics GmbH.

8.2 Fabmatics GmbH becomes owner of the goods upon delivery. If a reservation of ownership is agreed for your benefit, it shall initially have the effect of a simple reservation of ownership; irrespective of the reservation of ownership, however, Fabmatics GmbH has the right to use, process, and/or sell and transfer the goods at any time during the ordinary course of business and to transfer ownership of the goods to third parties, even if this causes the reservation of ownership to lapse.

9 Quality Assurance

9.1 You will examine any drawings, calculations, specifications, and other requirements of Fabmatics GmbH independently within the scope of your general and particular factual and professional knowledge for any errors or contradictions. You will notify Fabmatics GmbH about any concerns without undue delay so that a joint clarification can be carried out afterwards.

9.2 You have to maintain a quality assurance system, which meets the latest standards of the relevant supplier industry. You will carry out the quality assurance measures together with the required documentation independently. You will provide this documentation to Fabmatics GmbH upon request. You have to store the documentation in accordance with the legal requirements, however, for at least 10 years.

9.3 Prior to shipping, you will carry out a diligent outgoing inspection. Goods, which do not pass this inspection, must not be shipped. After delivery, Fabmatics GmbH will examine the goods only in respect to its type (identity check), the quantity, and for any transport damages and evident defects. We are not obligated to carry out any further inspections.

10 Material and Legal Defects

10.1 In the case of material or property defects of the goods, Fabmatics GmbH shall be entitled to the statutory claims and rights for defects without restriction. Fabmatics GmbH shall be entitled in any case to demand that you remedy the defect or deliver new goods free of defects without undue delay according to the choice of Fabmatics GmbH. All costs and expenses incurred by Fabmatics GmbH in connection with the supplementary performance shall be borne by you, which also include additional costs due to a transport of the goods to a different location. The right of Fabmatics GmbH for damages, particularly the right to damages instead of performance, remains explicitly unaffected.

10.2 Fabmatics GmbH has the right to remedy the defects itself at your cost and notwithstanding your liability for defects, if delay would lead to dangers or a particular need for urgency exists. In any such case, Fabmatics GmbH will notify you in advance, to the extent possible and reasonable, about the defects concerned.

10.3 The limitation period for claims based on defects amounts to 24 months from the delivery of the goods, unless a longer limitation period is stipulated by law. Goods that have been delivered new or, as the case may be, repaired in the course of the supplementary performance shall insofar once be subject to a newly-commencing limitation period of 24 months; if the originally applicable, remaining limitation period should be longer, the latter shall apply.

10.4 Any formal complaint concerning the defects that is submitted by Fabmatics GmbH within the limitation period suspends the statutory limitation until an agreement has been reached with you concerning the correction of the defect and of any consequences; the suspension ends, however, 6 months after you have finally rejected the formal complaint. Claims based on defect become statute-barred at the earliest 3 months after the suspension ends, however, in no case prior to the expiration of the warranty period.

10.5 If Fabmatics GmbH has a claim for supplementary performance against you, you shall also refund the additional costs for any inspections, reconstruction and touch-up work or other activities of Fabmatics GmbH resulting as a consequence of the defective delivery. Fabmatics GmbH has the right to charge you a reimbursement of EUR 15 for each full quarter of an hour for any such work.

11 Proprietary Rights

11.1 You warrant that no third-party rights are infringed in connection with your delivery and that no ownership rights, intellectual property rights, or copyrights (hereinafter: Proprietary Rights) of third parties exist in respect to the goods, which could affect or rule out their free use by Fabmatics GmbH.

11.2 If Fabmatics GmbH is held responsible by a third party because of an infringement of a Proprietary Right, you are obligated to ensure the usability of the product to be produced by Fabmatics GmbH for our customer, if applicable, by modifying the parts infringing the Proprietary Right or replacing them with parts that are free from Proprietary Rights according to your choice. You will be liable for all losses, particularly due to compensation claims from customers of Fabmatics GmbH or other third parties, which result from a Proprietary Rights infringement due to the intended use of the goods.

General Purchasing Conditions Fabmatics GmbH

11.3 You shall indemnify Fabmatics GmbH against any and all third-party claims based on a Proprietary Rights infringement, which are asserted against Fabmatics GmbH or against which Fabmatics GmbH itself has to indemnify its customers. You are not authorized to enter into any agreements with the third party without the consent of Fabmatics GmbH, such as e.g. a settlement agreement. Your indemnification obligation extends to all expenses, which Fabmatics GmbH necessarily incurs based on or in connection with the claim asserted by a third party.

11.4 Fabmatics GmbH reserves all ownership, usage, design, patent, brand, copy, personality, or other Proprietary Rights, particularly in respect to the images, drawings and other documents, design proposals, templates, working materials, forms, copyrights, moduls, copyrights, know-how, and calculations as well as software provided by Fabmatics GmbH in physical or electronic form.

12 Rescission, Liability, Indemnification, and Insurance

12.1 Notwithstanding any other rescission rights, Fabmatics GmbH has the right to rescind the contract in whole or in part (i) in the case of a material deterioration of your assets, (ii) if insolvency proceedings are commenced for your assets or are rejected due to insufficient assets, or (iii) if you do not fulfill due material obligations towards Fabmatics GmbH without justification.

12.2 You are liable to us, particularly for damages, without restriction in accordance with the statutory provisions.

12.3 Notwithstanding our other claims, you shall indemnify us against all third-party damage claims, particularly those based on product liability, to the extent that these are asserted against Fabmatics GmbH due to a cause that lies in your sphere of control and organization, and which the third party could therefore also assert against you instead of against Fabmatics GmbH. Indemnification particularly also includes the defense against unjustified claims, the compensation of any expenses incurred by Fabmatics GmbH, as well as costs in connection with recall measures.

12.4 You are obligated, notwithstanding our other claims, to maintain extended product liability insurance with an adequate coverage amount for each loss occurrence.

13 Provision of Materials, Tools, Drawings

13.1 The materials provided by Fabmatics GmbH and other provided objects such as e.g. containers and special packaging remain property of Fabmatics GmbH. They may only be used as intended and for orders of Fabmatics GmbH. Any processing or reshaping by you will be carried out on behalf of Fabmatics GmbH. If the provided materials are processed or mixed in with other objects that are not owned by Fabmatics GmbH, Fabmatics GmbH will acquire joint ownership of the new object in proportion of the value of the provided materials (purchase price) to the other processed objects at the time of the processing or, as the case may be, mixing.

13.2 Tools, drawings, samples, etc., which Fabmatics GmbH provided to you, remain property of Fabmatics GmbH, they must be marked as such, and stored separately. If these or parts thereof are given to third parties after the prior consent of Fabmatics GmbH, such third party must be notified of the ownership of Fabmatics GmbH in writing. All tools, drawings, samples, etc. must be returned to Fabmatics GmbH without undue delay after the end of the supply relationship or the contract. Any retention right is insofar excluded.

13.3 You are obligated to use any tools and other means of production as well as drawings, models provided by Fabmatics GmbH and all other confidential information and documents received from Fabmatics GmbH exclusively for the production of the goods ordered by Fabmatics GmbH. You have to carry out any service and inspection work as well as maintenance and repair work in respect to the tools and means of production provided by Fabmatics GmbH in time and at your expense. Fabmatics GmbH must be notified of any incidents without undue delay.

13.4 You bear the risk of loss, destruction, or damage of provided materials, tools, or other means of production. You are obligated to insure the aforementioned objects at their reinstatement value at your expense against the usual risks such as theft, fire, water, breakage, and other damage. Simultaneously, you authorize Fabmatics GmbH already now to pursue all compensation claims under these insurance policies.

14 Confidentiality

14.1 You are obligated to treat all drawings, models, production standards, calculations, and other documents as well as information, which you receive from Fabmatics GmbH in a physical or electronic form, confidential. They may only be disclosed to third parties with explicit consent of Fabmatics GmbH. The secrecy obligation shall also apply after the delivery relationship or, as the case may be, the contract has been wound up; it expires when and to the extent that the production knowledge contained in the provided drawings, models, calculations, and other documents or, as the case may be, the information have become generally known.

14.2 Publications of orders and services as well as any reference to any such order vis-à-vis third parties required the explicit prior written consent of Fabmatics GmbH.

14.3 The use of order data for advertising purposes as well as the disclosure of addresses, telephone numbers, or employee data of Fabmatics GmbH, which are not related to the order, is prohibited.

General Purchasing Conditions Fabmatics GmbH

14.4 Fabmatics GmbH informs you that your data, which is related to a potential transaction, will be stored.

15 General Provisions

15.1 The respective delivery address stated by Fabmatics GmbH shall be place of performance and place of fulfillment.

15.2 If you are a tradesman, the general business seat of Fabmatics GmbH shall be exclusive place of venue. Fabmatics GmbH shall, however, retain the right to sue you at your general place of venue, at the place of the violating action, or at the place where the result materialized.

15.3 The laws of the Federal Republic of Germany apply to the exclusion of the provisions of the UN Convention for the International Sale of Goods is excluded.

15.4 If all or part of one or several provisions of these General Purchasing Conditions should be or become ineffective, the remaining provisions shall remain unaffected. The ineffective provision shall be replaced by an effective one, which resembles the economic purpose of the ineffective provisions as closely as possible. The same applies to contractual gaps that need to be filled.

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