

General Terms and Conditions for the Delivery of Machinery

I. Scope of application of these terms and conditions

These terms and conditions are applicable for:

1. a person who concludes the contract within the scope of its business;
2. legal entities under public law and public law separate assets.

II. General

1. These terms and conditions apply for all supplies and services together with special contractual items – if any. Customer's General Conditions of Purchase shall not apply even if the order is accepted. A contract is concluded, unless otherwise agreed with the written order confirmation of Feige Filling GmbH.
2. Feige Filling GmbH retains all property rights and copyrights with respect to cost estimates, drawings and other information even if such information is in electronic form. Access to them by third parties is prohibited. Feige Filling GmbH is obliged to only allow third parties access to planning documents designated by the customer as confidential with the latter's consent.

III. Scope of delivery

With respect to the volume of the delivery, the written order confirmation by the supplier is decisive. In the case of an offer made by the supplier with a time limit and with a timely acceptance, then, in the absence of a timely order confirmation, the offer is decisive. Supplementary agreements and amendments must be approved in writing by the supplier.

IV. Price and payment

1. In the absence of a special agreement, the prices are effective ex works including loading in the factory, but not including packaging. Value added tax currently in effect at the particular time shall be added to the prices.
2. Payment shall be made in accordance with the agreement. For payments made after the due date for payment, interest will be charged at a rate of 8 percent points above the basic rate of the European Central Bank.
3. The retaining of payments or the set-off of payments on account of any counterclaims of the customer in dispute of the supplier is prohibited.

V. Time of delivery

1. The decisive date for the completion of the order is the date of order confirmation. Feige Filling GmbH is obliged to submit the order confirmation as a rule no later than two weeks subsequent to the receipt of the written order provided that the technical design and the scope of performance and delivery have been conclusively and explicitly decided upon in detail prior to the date of receipt. Should, with respect to the foregoing, an interruption or a delay occur, Feige Filling GmbH reserves the right to set a new date as mutually agreed upon.
2. The stated time of delivery is based on a timely delivery by the subcontractors of Feige Filling GmbH of essential additional parts corresponding to the offer. Should a delay in this regard occur, the delivery date will be adjusted accordingly.
3. The time for delivery has been complied with if prior to the expiration of the delivery date the object to be delivered has left the factory or if notification of readiness for shipment has been made. If a formal acceptance has to be made, the acceptance date shall apply – except in the event of justified refusal of acceptance – or the date of the notice of readiness for acceptance.
4. If shipment or acceptance of the supplies are delayed by reasons attributable to the customer, cost resulting from such delay will be charged beginning one month after notice of readiness for shipment or acceptance.
5. If a delay is caused by force majeure, labour disputes or other reasons beyond the supplier's reasonable control, the time of delivery is extended as reasonable under the circumstances. The supplier shall inform the customer about beginning and end of such circumstances.
6. The customer can cancel the contract without prior notice if the total supply becomes finally impossible prior to the date of passing a risk. The customer can also cancel the contract if part of the supplies under an order becomes impossible and the customer has valid reasons to refuse a partial delivery. Without such valid reasons the customer has to pay the contract price in relation to the partial delivery. The same shall apply if delivery is not possible for the supplier. Article IX. 2 of these terms and conditions shall apply. If the delivery becomes impossible during a delay of acceptance or

if the customer is responsible for the supplies becoming impossible, the customer remains obliged to pay the contract price.

7. If the customer suffers damage on account of a delay he is entitled to demand compensation. Such compensation shall be in the amount of 0.5 % per full week of delay subject to a maximum of 5 % calculated on the value of the particular portion of the supplies which as a result of the delay could not be used in time or as per the contract. Except as otherwise stated by law the customer may give reasonable notice to the supplier in the event of a delay attributable to the supplier. If the supply is not made within such reasonable notice period, the customer may cancel the contract according to law. No further compensation of damages shall occur unless provided otherwise in article IX. 2 of these terms and conditions
8. Should shipment be delayed upon the customer's request, the customer will be charged with the costs of the storage and, in the case of storage in the supplier's factory, a minimum of ½ % of the invoice amount for each month, commencing one month after the notice of readiness for shipment. Feige Filling GmbH is nevertheless entitled, subsequent to the setting and the expiry of a reasonable time period, to otherwise dispose of the object of the delivery and to supply the customer within a reasonably extended time period.

VI. Passing of risk and receipt

1. Risk passes to the customer at the latest with the dispatch of the parts to be delivered; this also applies in the case of permissible partial deliveries or where Feige Filling GmbH has assumed other obligations, e.g. shipment costs or transport and installation. If a formal acceptance has to be made, acceptance is the date for passing a risk. Acceptance has to be made without delay latest after notice of the supplier for readiness for acceptance. The customer may not refuse acceptance in case of minor defects. Upon request by the customer and at his expense the shipment will be insured by Feige Filling GmbH for theft, for losses, occasion by breakage, transport, fire and water, and for other insurable risks.
2. In case of a delay of dispatch or acceptance by reasons not attributable to Feige Filling GmbH the risk passes from the day of notice of readiness for dispatch or for acceptance. Feige Filling GmbH is obliged to cover such insurance as requested by the customer at his expense.
3. Partial deliveries are permitted to the extent reasonably acceptable to the customer.
4. Loss or damage during transport shall be reported immediately in writing by the customer to the shipping firm. All steps necessary to protect the rights of the commissioning party shall be initiated immediately by the customer. Loss or damage occurring during transport shall be reported to Feige Filling GmbH within a preclusive time period of one week. Damage or loss during transport does not release the customer from full payment of the purchase price. The customer assigns to Feige Filling GmbH in advance all claims against third parties based on damage or loss during transport, and Feige Filling GmbH accepts this assignment. This assignment and any benefits paid by the transport insurance are exclusively for the sake of performance.

VII. Retention of title

1. Feige Filling GmbH retains property in the delivered objects until the receipt of all payments in conjunction with the delivery agreement. Furthermore, the delivered goods remain the property of Feige Filling GmbH until full payment of all debts owed to Feige Filling GmbH in conjunction with the business relationship with the customer at the time of the concluding of the particular agreement.
2. Feige Filling GmbH is entitled to insure, at the customer's expense, the objects of delivery for damage or loss occasioned by theft, breakage, fire, water or other damage unless the customer itself has proven that it has taken out such insurance.
3. If the customer acquires the object of delivery for the purposes of resale, the customer is entitled to sell it in the ordinary course of business. If the object of delivery is not intended for resale, a further disposal is not permitted without the prior consent of Feige Filling GmbH. Furthermore, a further disposal is not permitted if the claim ensuing therefrom is included in an earlier disposition of the customer for the benefit of a third party, for example by a general assignment of all claims. The claims arising from the sale of the object of delivery which is subject to a retention of title are hereby assigned, in full and with all subsidiary and security rights, to Feige Filling GmbH effective as of the point in time at which such claims arise. Feige Filling GmbH hereby accepts the assignment.
4. The customer shall not pledge the object of delivery nor transfer ownership as a security measure. In the case of a levy of execution/distress as well as a legal seizure attachment or any other dis-

position by a third party, the customer shall inform Feige Filling GmbH of this without delay.

5. In the case of delay in payment by the customer exceeding one month, default in payment of the customer, the protecting of a cheque or bill of exchange (in so far as Feige Filling GmbH is the payee of this cheque or bill of exchange), a successful levy of execution/distress of the goods subject to the reservation of property or the filing of a petition in bankruptcy or judicial or extra-judicial composition proceedings (to avert bankruptcy) pertaining to the assets of the customer, the customer's right to resell the object of delivery subject to property retention lapses, as does the right to collect assigned debts. Feige Filling GmbH must be informed immediately of the foregoing events. The object of delivery subject to retention of title shall be stored separately and shall be returned immediately to Feige Filling GmbH upon demand. The raising of claims under the retained title of ownership or the levying of execution/distress by Feige Filling GmbH is not deemed as a repudiation/cancellation of the agreement.
6. Provided that the secured claims of Feige Filling GmbH are not merely temporarily secured in an amount exceeding 110% by way of retention of title and/or assignment or other security measures, Feige Filling GmbH shall, upon demand by the customer, release security rights in its own discretion in order to no longer exceed the aforementioned limit.

VIII. Liability for defective deliveries

For deliveries defective in quality or title the supplier is liable to the exclusion of further claims but without prejudice to article IX.2 of these terms and conditions:

Defects in quality:

1. Upon suppliers choice all such parts are to be repaired or to be exchanged without defects which have shown to be defective by any circumstance occurred prior to passing of the risk. If such defects are found the supplier has to be informed in writing without delay. Parts exchanged shall become the property of the supplier.
2. For all repairs or exchanges the supplier deems necessary the customer has – after agreement with the supplier – to grant necessary time and opportunity; in the event of failure the supplier shall not be liable for any consequences. In urgent cases only if the safety of operation is concerned or if unreasonably high damages have to be avoided the customer is entitled to repair the defect himself or to have it repaired by a third party and to claim reimbursement of the necessary expenses. In this event the supplier has to be informed immediately.
3. The supplier shall bear the direct cost for repair or exchange parts including transport if the claim was justified. The supplier shall also bear the cost of dismantling and installation and – if necessary – the cost of personnel including travelling cost subject to the condition that these costs are not an unreasonable burden for the supplier.
4. Within the limits of law the customer may cancel the contract if the supplier – with exceptions as per law – after reasonable notice for repair or replacement does not fulfill his obligations because of a defect. In the event of minor defects the customer shall only be entitled to price reduction. Otherwise the right for reduction is excluded. For further claims article IX.2 if these terms and conditions shall apply.
5. The supplier shall not be liable in the following cases: Unsuitable or faulty operation, faulty erection or commissioning by the customer or third parties, normal wear and tear, faulty or negligent treatment, unsuitable maintenance, unsuitable material, faulty construction works, unsuitable foundations, chemical, electrochemical or electrical impacts – unless they are attributable to the supplier.
6. In case of unsuitable repair or replacement by the customer or a third party the supplier is not liable for the consequences. The same shall apply if changes are made to the supplies without prior consent of the supplier.

Defects in title

7. In the event of an infringement of industrial property rights or copyrights by use of the supplies the supplier at his expense has to obtain the right for the customer for further use or to modify the supplies to the extent that the rights of third parties are not infringed. If this is impossible under reasonable conditions or in reasonable time the customer may cancel the contract. In these cases the supplier also has the right to cancel the contract. In addition, the supplier has to keep the customer free and harmless from undisputed or undisputable claims of owners of the industrial property rights in question.
8. The obligations of the supplier as per article VIII.7 are final for the case of infringements, except in the event of article IX.2. Claims can only be raised if
 - The customer informs the supplier without delay of alleged infringements
 - The customer reasonably assists the supplier in the defence or gives opportunity for modifications according to article VIII.7
 - All defences including settlements out of court are reserved for the supplier
 - The defect in title is not the result of an instruction by the customer and
 - The infringement is not caused by changes made by the customer or by an operation not according to the contract.

IX. Liability

1. If the customer is unable to use the object delivered in accordance with the agreement, the fault of which is attributable to Feige Filling GmbH, due to the fact that the latter, prior to or subsequent to the concluding of the agreement, failed to make recommendations, to advise the customer or to fulfil other contractual secondary obligations, in particular, to provide instructions for operating and servicing the supplies, or carried out any of the foregoing incorrectly, the rules contained in article VIII and IX.2 shall apply accordingly to the exclusion of further claims of the customer.
2. For damages which did not occur to the object of delivery itself the supplier shall only be liable – under law or otherwise -
 - a) In the event of intentional acts,
 - b) In the event of gross negligence of the owner or members of the board or of the management,
 - c) In the event of negligent personal injury or death,
 - d) In the event of defects which have been intentionally not mentioned or in the event of guarantees,
 - e) In the event of defects to the extent the Act on Product Liability statutes a liability for personal injuries or damage to goods in private use.

In the event of negligent breach of fundamental obligations the supplier shall also be liable in case of gross negligence of employees not belonging to the management and in the event of negligence. In case of negligence liability shall be limited to such damages typical for the contract and reasonably foreseeable. Further claims are excluded.

X. Time-bar

All claims of the customer – under law or otherwise – are time-barred at the expiry of 12 months. For claims for damages under article IX.2.a) – e) the periods as per law shall also apply for construction works or for supplies which are normally incorporated into construction works and which have caused defects in the construction works.

XI. Use of software

To the extent the supplies include software a non-exclusive license is granted for use of the software including its documentation. Such license is limited to the use within the supplies. Use of the software on more than one system is not allowed. The customer may use the software within the limitations under law only. Copies, changes, translations or transfer from the object code to the source code are not allowed. The customer may not take away producer information – in particular copyright marks – without prior consent of the supplier. All other rights to the software and the documentation including copies are retained by the supplier or the supplier of the software. Sub-licenses may not be granted.

XII. Applicable law, place of jurisdiction

1. In all respects between the supplier and the customer German law shall apply as applicable between persons resident in Germany.
2. Place of jurisdiction is the place of residence of the supplier. The supplier is also entitled to sue in the jurisdiction in which the customer's head office is located.