

Foundry Service GmbH B2B Sales Terms and Conditions

1 General – Scope

1. These Sales Terms and Conditions (T&C) shall apply for all current and future business relations between Foundry Service GmbH and Merchants (Ordering Parties).
2. Merchants in the meaning of these Sales T&C are any natural or legal persons or associations with legal capacity acting in a commercial or independent professional function when conducting a legal transaction.
3. Deviating, contrary or supplemental T&C shall not become part of the contract, even if they are known, unless it has expressly been agreed on in writing that they shall apply.
4. If Foundry Service GmbH changes these T&C, these T&C shall – in their communicated new version – become part of the contract unless Ordering Party objects within a period of one month. When communicating the new version, Foundry Service GmbH shall point out that non-acknowledgment of the communication shall be considered consent with the changed Sales T&C.

2 Contract effectiveness

1. The quotes from Foundry Service GmbH shall be non-binding. Information in catalogs, brochures, online offerings and other advertising media shall be non-binding. Technical modifications, as well as changes in shape, color, and/or weight within reasonable limits shall be reserved.
2. By ordering a deliverable or a service, Ordering Party is entering a binding declaration of intent to purchase the deliverable and service. Foundry Service GmbH shall have the right to accept the offer contained in the purchase order within a period of two weeks from receipt.
3. The contract shall be entered with the proviso that subcontractors' deliveries are correct and timely. This proviso shall be void if Foundry Service GmbH is responsible for a deliverable that fails to be correct or timely, in particular in case of failure to enter an appropriate contract with a subcontractor in a timely manner, or at all.

3 Prices

1. The prices in EUR shall be understood to be ex warehouse, net of packaging and shipping, plus the applicable VAT.
2. The prices printed in the catalog are the prices applicable at the date of printing. The right to correct printing errors shall remain reserved. The prices effective on the date the contract is entered shall apply.
3. If the implementation of an order accepted by Foundry Service GmbH extends over a period of more than three months - counting from the date Foundry Service GmbH confirmed the order to the date shipping readiness is declared by Foundry Service GmbH - Foundry Service GmbH shall have the right to pass on any price increases it experiences due to the execution of this purchase order from its own subcontractors and suppliers or by other third parties as a surcharge on the contractual price agreed on in the order confirmation or otherwise.

4 Payment terms

1. Invoices shall be payable net within thirty days from invoice date. If payment is made within a period of 14 days from invoice date, a 2% discount shall apply.
2. During a payment delay, Ordering Party shall pay interest on the amount owed at a rate that is 8% above the prime rate. Foundry Service GmbH shall be entitled to charge EUR 2.50 for each reminder.

3. If Ordering Party is in acceptance delay, the due date for payment shall be the date on which readiness for shipping was declared.
4. Foundry Service GmbH expressly reserves the right to decline checks or bills. Acceptance shall only serve the purpose of performance. Discount or bill fees shall be borne by Ordering Party and due immediately.
5. Ordering Party shall only have the right to offsetting if it has a final legal decision on its counterclaims, or if they have been acknowledged by Foundry Service GmbH.
6. Ordering Party may exercise its right to hold-back only if its counterclaim is based on the same contract.

5 Time of delivery and performance, partial deliveries

1. Delivery dates or deadlines shall be binding only if they have been expressly promised. They shall require the written form.
2. In case of delay in delivery by Foundry Service GmbH, Ordering Party shall have the right to set a grace period / issue a warning of non-acceptance in writing, and to rescind the purchase order regarding the delayed delivery if a grace period has expired unsuccessfully. However, grace periods must be a minimum of the following time periods:
 - b. Four weeks for making repairs on transport containers for molten masses, and on induction systems;
 - c. Three months for new fabrication of mechanical machines for transporting molten masses;
 - d. Three months for new fabrication of electrical systems;
 - e. Three months for contracts regarding the trade with induction systems and containers for transporting molten masses and their related peripherals.
3. If non-compliance with the delivery deadline results from *Force Majeure*, labor strife, unforeseeable obstacles, or other circumstances not under the control of Foundry Service GmbH; in particular, if such circumstances occur at subcontractors', the delivery deadline shall be extended appropriately.
4. Foundry Service GmbH shall have the right to make partial deliveries.
5. At any time, Foundry Service GmbH shall have the right to make delivery dependent on concurrent payment, without giving cause. Ordering Party's hold-back rights from Sections 273, 320 German Civil Code (BGB) shall be excluded unless they are in turn founded on acknowledged or legally final counterclaims of Ordering Party.
6. Compliance with the contractual delivery deadlines shall require the prior timely receipt of any and all documents, required permits and approvals to be provided by Ordering Party; in particular, of plans, as well as compliance with the contractual payment terms and other obligations on the part of Ordering Party. If these prerequisites have not been met in time, the deadlines shall be extended appropriately. This shall not apply if Foundry Service GmbH is responsible for the delay.
7. If Foundry Service GmbH defaults on a payment, Ordering Party may – if it can prove that it suffered a loss due to this fact – request 0.5% compensation per each full week payment is delayed, but no more than a total of 5% of the price of such part of the deliveries that Ordering Party was not able to put to its intended use.

6 Shipping, erection and assembly, transfer of risk

1. Shipping shall be at Ordering Party's risk and expense. The same shall apply for any returns unless Ordering Party has been authorized to make the return.
2. The risk of accidental destruction or impairment of the deliverable and service shall transfer to Ordering Party at the time of hand-off of the object to freight forwarder, carrier, or other person or entity destined to perform the shipping. This shall also apply in case of partial deliveries, or if Foundry Service GmbH has also assumed additional services, such as shipping, delivery to works, or erection. Upon Ordering Party's request, Foundry

Service GmbH shall insure the shipment against theft, breakage, transport, fire, water and other risk/damage at Ordering party's expense.

3. If shipping is delayed due to circumstances under the control of Ordering Party, the risk shall transfer to Ordering Party on the date of readiness for shipping; however, Foundry Service GmbH shall, at Ordering Party's request and expense, obtain the insurance coverage Ordering Party requests. Foundry Service GmbH reserves the right to store the shipment and service for justified cause. The cost of such storage shall be borne by Ordering Party.
4. If shipping, delivery, start, execution of erection or assembly, take-over into Ordering Party's plant or trial operation is delayed for reasons under Ordering Party's control, or if Ordering Party is in delay regarding acceptance, the risk shall transfer to Ordering Party.
5. Unless otherwise agreed on in writing, the following provision shall apply for erection and assembly:
 - a. The following shall be assumed by Ordering Party at its expense and provided in a timely manner:
 - aa. All earthmoving, construction and other ancillary work performed by other industries, including the required skilled and unskilled workers, building materials and tools;
 - bb. The operating materials and equipment required for erection and assembly, such as scaffolding, hoisting gear and other equipment, fuels, and lubricants;
 - cc. Energy and water at the work site, including connections, heating and lighting;
 - dd. At the assembly site, for storing machine components, equipment, materials, tools, etc., sufficiently large, suitable dry and lockable rooms, and for the assembly personnel, appropriate work and break rooms, including appropriate washrooms; in addition, Ordering Party shall take measures on the building site for protecting Foundry Service GmbH's assets and the assembly personnel equivalent to measures Ordering Party would take for its own assets.
 - ee. Protective clothing and equipment required due to special circumstances at the assembly site.
 - b. Before the start of assembly, Ordering Party shall automatically provide the necessary information on buried / invisible electrical, gas and water lines, as well as similar systems, including the structural information required.
 - c. Before the start of erection or assembly, the provisions and objects required for starting work shall be at the place of performance or assembly, and before erection starts, preparatory work shall be in a stage that will allow erection or assembly to begin as agreed on, and without interruptions. Access roads/paths and the erection or assembly site must be leveled and cleared of obstructions.
 - d. Ordering Party shall promptly certify the assembly personnel working hours on a weekly basis, as well as report the completion of erection, assembly or commissioning to Foundry Service GmbH.
 - e. If Foundry Service GmbH requests acceptance of the deliverable after completion, Ordering Party shall comply within two weeks. In case of con-compliance with this condition, acceptance shall be considered completed. Acceptance shall also be considered completed if the deliverable has been put into operation; possibly after an agreed-on test phase.

7 Reservation of title

1. Foundry Service GmbH reserves the title to the deliverable and service until payment has been made in full and all receivables from the current business relationship have been settled.
2. Ordering Party shall treat the deliverable and service with care.

3. Ordering Party shall promptly notify Foundry Service GmbH if third parties access deliverable and service, such as by attachment, as well as any damage to or the destruction of deliverable and service. Ordering party shall promptly announce any change in ownership in deliverable and service that has occurred outside the ordinary course of business.
4. If Ordering Party behaves in violation of the contract; in particular, in case of payment default or violation of an obligation according to Nos. 2 or 3 of this provision, Foundry Service GmbH may rescind the contract after an appropriate grace period for performing the contract has expired without success, and request the return of the deliverable and service.
5. Ordering Party shall have the right to process delivery and service in its ordinary course of business or in conjunction with or mixed in with other objects.
6. Ordering Party shall have the right to resell deliverable and service, or the repeat deliverable and service, in its ordinary course of business. Ordering Party herewith assigns to Foundry Service GmbH all receivables in the amount of the invoice total for the deliverable and service, which has been provided by Foundry Service GmbH and resold, that arise for Ordering Party from the resale against a third party. Foundry Service GmbH accepts the assignment. After assignment, Ordering Party shall be authorized to collect the receivables until the authorization is revoked. Foundry Service GmbH reserves the right to collect the receivables itself as soon as Ordering Party ceases to comply with its payment obligations and defaults on payment.

8 Warranty, obligation to examine, return

1. Foundry Service GmbH shall initially warrant defects of deliverable and service, at its discretion, in the shape of rework or replacement. Beyond that, Ordering Party may, at its discretion, enforce its legal rights. In case of a minor contract violation; in particular, for minor defects, Ordering Party shall, however, not have the right to rescind the contract or claim damages.
2. In the context of warranty for defects, Foundry Service GmbH shall not be liable if a defect was not recognizable for Foundry Service GmbH, or was recognizable only with unreasonable effort.
3. Ordering Party shall be subject to a Merchant's obligation to give notice of defects according to Section 317 German Commercial Code (HGB), and must, beyond that, notify Foundry Service GmbH within a period of eight days from receipt of deliverable and service in writing of any visible defects; otherwise, the delivery and service shall be considered contractually approved by Foundry Service GmbH.
4. If the deliverable and service ordered have been properly provided by Foundry Service GmbH, rescission and return of the deliverable shall only be admissible with the express consent of Foundry Service GmbH. Foundry Service GmbH shall charge a fee in the amount of 10% of the invoice total as a processing fee.
5. Ordering Party shall be fully responsible for providing proof for any prerequisites in its sphere for any warranty claims brought by it; in particular, for the defect itself, for the time the defect was detected, and finally, for the fact that Ordering Party has complied with the requirements of the operating instructions when using the deliverable and service of Foundry Service GmbH, as well as the timeliness of the notification of defect.
6. The quality of the deliverables and services of Foundry Service GmbH shall solely be governed by the performance specification in the written order confirmation provided to Ordering Party by Foundry Service GmbH.
7. The warranty period for deliverables and services from Foundry Service GmbH shall be as follows:
 - a. For delivery of newly fabricated objects and performance of work,
 - aa. One year;

- bb. Five years if the service provided by Foundry Service GmbH is construction work;
 - b. If trade is in used goods and objects;
 - aa. For exclusive sales to consumers, one year;
 - bb. For sale of same to other Merchants (B2B), sale shall be 'as seen and examined,' to the exclusion of any warranty. In this regard, the purchasing Merchant is referred to its right to examination in the context of sales, Section 377 HGB shall apply.
- Should one of the preceding provisions be ineffective, alternately, the shortest legally admissible warranty period shall apply.
8. Foundry Service GmbH's liability for warranty for defects shall be excluded, notwithstanding the issue of culpability, as soon as the object delivered by Foundry Service GmbH is used or operated in non-compliance with the operating instructions; purchaser shall be responsible for providing proof that it has not violated the requirements of the operating instructions.
 9. Guaranties in the legal sense shall not be assumed by Foundry Service GmbH. Manufacturer's warranties shall remain unaffected hereby.

9 Limitations of liability

1. In case of slightly negligent violations of Foundry Service GmbH's obligations, liability shall be limited to the direct average loss foreseeable and typical for the contract; however, no more than EUR 500,000. This shall also apply for slightly negligent violations of obligations on the part of legal representatives or agents. In case of slightly negligent violations of inessential contractual obligations, Foundry Service GmbH shall not be liable. The preceding provision shall apply to all claims for damages in addition to the performance, and claims for damages instead of the performance, no matter for what legal reason; in particular, due to defects, violation of non-contractual obligations, inability, or tort.
2. The preceding limitations of liability – if Foundry Service GmbH should be affected by these in exceptional cases – shall not apply for product liability claims of ordering parties who are consumers. In addition, limitations of liability shall not apply in case of bodily injury, loss of health or life, which Foundry Service GmbH is responsible for.
3. The statute of limitations for Ordering Party's claims for damages due to a defect shall be one year from delivery of deliverable and service. This shall not apply if Foundry Service GmbH can be held responsible for gross negligence, as well as in case of bodily injury, loss of health or life, which Foundry Service GmbH is responsible for.

10 Indemnification from product liability claims

1. Ordering party shall indemnify Foundry Service GmbH from claims of third parties brought by these against Foundry Service GmbH due to a loss caused by a product purchased from Foundry Service GmbH that was installed in another end product, if the price of the product delivered by Foundry Service GmbH is not in a reasonable relation to the purchase price of the end product. Reasonableness shall be exceeded if the purchase price of the end product is 2,000 times the purchase price for the product supplied by Foundry Service GmbH.

11 Product Watch Service

1. Foundry Service GmbH shall strive, within the realm of the possible, to provide advance information if products are to be phased out in future and/or shall cease to be deliverable in future, and make appropriate alternate recommendations (Product Watch Service.) Such information cannot always be provided; Ordering Party shall not have a legal claim to such information being provided even if Ordering Party has explicitly asked for such information.
2. The Product Watch Service shall be free of charge for Ordering Party.

3. Foundry Service GmbH shall not assume any liability for the correctness and/or timeliness of information in the context of Product Watch Service. The information that a product will no longer be available does not include a statement that the product shall not be available through other supply avenues. If Foundry Service GmbH names a replacement product, it shall be Ordering Party's responsibility to examine the recommended product for suitability for the party's purposes. Foundry Service GmbH shall not assume any liability for the replacement product's suitability for use.
4. The preceding limitations of liability shall not apply in case of wrong information provided by Foundry Service GmbH intentionally or in gross negligence. In addition, the limitations of liability shall not apply in case of bodily injury, loss of health or life, which Foundry Service GmbH is responsible for.

12 Final provisions

1. The laws of the Federal Republic of Germany shall apply. The CISG shall not apply.
2. If Ordering Party is a Merchant, a legal person under public law, or a special entity under public law, the exclusive venue for all legal disputes from contracts governed by these provisions shall be the Landgericht Hagen, Germany. The same shall apply if Ordering Party does not have a general legal venue in Germany, or if its residence or usual whereabouts are not known when a legal action is brought. Foundry Service GmbH shall, however, be free to bring action against Ordering Party in the latter's general court venue.
3. Should individual provisions of the contract with Ordering Party, including these T&C, be or become wholly or partially ineffective, the effectiveness of the remaining provisions shall not be affected hereby. The provision that is wholly or partially ineffective shall be replaced by one whose economic success corresponds to the parties' intent as determined by supplemental interpretation of the contract; as a last alternative, non-mandatory law shall apply.

13 Data protection/privacy notice

1. Ordering party's personal data shall be stored by Foundry Service GmbH exclusively for the purpose of customer service and information.
2. If an Ordering Party does not wish to receive any further information, this will be complied with by Foundry Service GmbH upon a corresponding notification.