

Terms and Conditions of Purchase

1. General Provisions

The following terms and conditions shall apply to Faigle's orders unless provided for otherwise by way of written agreement. In order to amend them it shall be in no event sufficient to make general reference to the printed or otherwise mechanically reproduced general terms and conditions of sale of the supplier; moreover a specific written agreement shall be required for each departure from the following terms and conditions. The fulfillment of an order shall be deemed to constitute acknowledgment of Faigle's terms and conditions in any event.

2. Orders

Only orders issued in writing by way of letter, fax or sent by electronic means (email) shall be binding. No oral agreement shall be binding unless confirmed specifically in writing by way of letter, fax or sent by electronic means (email). The supplier shall waive the defense of any oral ancillary agreement. Faigle rejects any and all retention of title on the part of the supplier.

3. Pricing

Prices shall be quoted to include shipping and expenses paid to the destination factory. Where purchases are agreed ex supplier's station or another agreed location, all expenses and cartage incurred up to the loading station shall be assumed by the supplier so that only the actual rail freight charges are assumed by Faigle. Faigle will not pay for any packing unless this has been specifically agreed. In this event the packing shall be returnable free of charge to the dispatching rail station and two thirds of the amount invoiced to Faigle to be credited upon return. Where as an exception prices are not agreed in advance, the binding prices shall be itemized in the supplier's order confirmation; Faigle's right of refusal or to rescind the contract shall remain in full force and effect.

4. Place of Performance and Shipping

- a) The place of performance for all deliveries shall be Bregenz, Austria.
- b) Rail shipments shall be directed to this station only; the supplier shall be liable for the consequences of any incorrect declarations made in the waybill/consignment note.
- c) Notice of dispatch shall be made for each shipment.
- d) Where the order number and subject are missing in the shipping documents, all expenses incurred by Faigle as a result shall be borne by the supplier.
- e) The costs associated with stamping the waybill shall be assumed by the party assuming the freight costs.

5. Invoicing and Payment

Invoices shall be submitted immediately upon the shipment of consignments. In the case of monthly deliveries, invoices shall be submitted no later than the third day of the following month. Any delays in issuing invoices will result in payment delays. Payment shall be effected at Faigle's discretion either net within three months of the invoice date, or with a 2% cash discount for payments effected within thirty days, or with a 3% cash discount for payments effected within ten days, payment to be effected in the currency of Faigle's choice. Faigle shall be entitled to offset any and all claims from deliveries and services provided by it, also where payment by way of bill of acceptance or trade bill has been agreed by the supplier.

6. Complaints and Claims

The supplier shall waive the defense of delayed notification of defects.

7. Guarantee and Warranty

All goods and services provided by the supplier that are defective upon delivery or upon being rendered or that should become defective during the warranty period shall be restored by the supplier immediately to their perfect condition as per contract or the supplier shall reimburse Faigle for the expenses incurred by it to remedy the defects, whereby Faigle shall be free to choose which of these two options it would like to pursue. Faigle shall also have the option to demand rescission of sale or a reduction in the purchase price. The supplier shall indemnify Faigle for the damage or loss incurred by Faigle in any event. The guarantee and warranty period shall amount to two years, and shall commence upon acceptance of the goods or services. Claims for hidden defects may also be asserted subsequent to expiration of the warranty period where they are filed immediately upon being detected.

8. Indemnification

- a) The supplier shall assume liability for any consequential damages incurred by third parties due to a defect in the goods supplied by it.
- b) The supplier shall be obligated for a period of ten years upon acceptance of the goods and services provided by it to disclose immediately upon request the address of the manufacturer, importer, subcontractor or upstream supplier of the goods supplied by it. The supplier shall inform Faigle of any new findings or claims filed in connection with the range of products supplied by it, this to be done immediately and without having to be specifically requested by Faigle to this effect. The goods supplied shall always be in accordance with the latest state of the art. In the event that the products supplied to Faigle shall no longer be capable of being used by it in light of new findings or developments, the supplier shall take back the stocks of this product at the invoice value.
- c) The supplier shall waive the defense of exemption from liability in its capacity of distributor or merchant. Where the supplier has acted in the capacity of a distributor or merchant, it undertakes to assume liability like its upstream supplier or the original manufacturer, and where it is unable to comply with its indemnification obligation, it shall disclose its upstream supplier as provided for in section 8b).
- d) The supplier shall also be liable for property damage incurred by Faigle on Faigle's corporate premises. Any terms or notifications providing for otherwise shall not apply and are expressly precluded.

9. Proprietary Rights

All deliveries shall comply with Austrian rules and regulations and technical standards. The supplier shall inform Faigle in the event that patents or industrial property rights apply to the goods being supplied. The supplier shall guarantee that the goods supplied by it do not infringe any domestic or foreign proprietary rights, otherwise it shall assume all the damages incurred by Faigle as a result.

10. Assignment of Rights

Claims asserted against Faigle may not be assigned to third parties.

11. Delivery Date

The supplier shall be subject to strict adherence to agreed delivery dates. In the event that a delivery date is exceeded, Faigle shall be entitled at its discretion, without granting the supplier a grace period, to either demand a replacement delivery and damages as the result of the delay in delivery or to rescind the contract and demand damages due to non-fulfillment / non-performance.

12. Force Majeure

In the event of business interruptions as the result of force majeure Faigle shall be entitled to suspend the contract either in part or in full or to demand that fulfillment be done at a later date. The supplier shall not be entitled to assert any claims as a result.

13. Place of Jurisdiction, Governing Law

The competent courts with subject matter competence for Bregenz, Austria shall have exclusive jurisdiction with regard to any and all disputes arising from or in connection with contracts hereunder. All legal relations between the parties hereto shall be governed and interpreted exclusively in accordance with the laws of Austria, to the exclusion of the UN Sales Convention (United Nations Convention on Contracts for the International Sale of Goods).

14. Concluding Provisions

- a) No remuneration shall be paid for the preparation of bids, projects etc.
- b) Where the supplier's order letter or sales confirmation is subject to stamp duty, this shall be assumed in full by the supplier. The supplier shall be responsible for the proper stamping of the documents.
- c) If any provision of these Terms and Conditions of Purchase shall prove void or unenforceable, it shall not in any way or manner affect the validity or enforceability of any other provisions hereof. Any such void or unenforceable provision shall be replaced by a new provision that comes closest to the void or unenforceable provision in its intent.

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