

General Terms and Conditions of Sale (GTCS) of Faigle Kunststoffe GmbH effective with January 2022

faigle Kunststoffe GmbH
Landstrasse 31
6971 Hard · Austria
T +43 5574 6811
kunststoffe@faigle.com
www.faigle.com

1. Scope of Application / General Provisions

- 1.1 These General Terms and Conditions of Sale (“GTCS”) apply to all legal transactions between the Customer and us.
- 1.2 The version of the GTCS as amended on the date of conclusion of the contract applies. We conclude contracts on the basis of these GTCS exclusively. The Customer expressly acknowledges the GTCS, so that they form part of the contract. Amendments or supplementations to the GTCS can only be made by mutual agreement and in writing, and do not affect the validity of the unamended provisions. Clause 1.5 of the GTCS also applies in this regard.
- 1.3 These GTCS also apply to all future contractual relationships, including supplementary contracts that do not refer explicitly to the GTCS.
- 1.4 Any terms and conditions of purchase of the Customer will not be accepted, even if we are aware of them, unless otherwise agreed in writing as an exception. We expressly reject the Customer’s terms and conditions.
- 1.5 We will notify the Customer of any amendments in the GTCS. Amendments are considered to have been agreed if the Customer does not object to the amended GTCS in writing within 14 days; the Customer will be expressly informed of the consequences of not responding in our communication to them. In case of contradiction, the GTCS as amended prior to the amendment will apply.
- 1.6 Employees who are not registered in the company register are not authorised to make agreements that deviate from these GTCS. Such agreements only apply if expressly accepted by employees who are registered in the company register in writing.

2. Quotations, Order Confirmations, Prices

- 2.1 All prices and quotations are non-binding and, unless otherwise stated, are quoted in euros subject to applicable VAT. All transportation and packing costs, freight and insurance charges, customs duties, taxes and levies will be borne by the Customer.
- 2.2 If there are changes in production costs (such as raw material costs) that are beyond our control between the date of the conclusion of the contract and the date of fulfilment, we will be entitled to unilaterally adjust prices accordingly.
- 2.3 Contracts with us are formed by our express written acceptance of orders (order confirmation). Unless otherwise expressly agreed, the content of the concluded contract is included in the order confirmation.
- 2.4 The stated prices apply “ex works” in the meaning of Incoterms 2020 and do not include transportation, packing, assembly or fitting costs. All shipping and transportation costs will be invoiced to the Customer at cost.

3. Payment Terms / Prohibition of Set-off

- 3.1 Payment of our invoices is due within 30 days of issue without deductions or charges. Payment by bank transfer is deemed to be received only after the amount has been credited to our account. Bills of exchange and cheques can only be accepted by written agreement and as payment of invoices, and without any cash discount applied. Discount interest and all banking fees are borne solely by the Customer.
- 3.2 In case of payment default we are entitled to demand default interest at the legally applicable rate. For businesses this is 9.2% p.a. above the base rate.
- 3.3 In case of payment default, the Customer undertakes to reimburse us for the resulting reminder and collection costs, where it is necessary to incur such costs in enforcing our claim. This will not affect our entitlement to assert additional rights and claims.
- 3.4 If the Customer defaults on a payment or part payment, or there is a decline in the Customer’s creditworthiness (in particular loss of credit insurance), we are entitled to immediately declare all claims due, and/or to demand prepayments or security deposits for the subsequent supply of goods and services.
- 3.5 Set-off of the Customer’s counterclaims that are disputed by us and have not been upheld by a court of law without recourse is excluded, as is exercise of a right of retention without legally effective title or on the basis of claims arising from other legal transactions.

4. Delivery and Delivery Delays

- 4.1 In case of delivery/shipment of goods by us, the delivery of shipping method and packaging shall be at our discretion.
- 4.2 We are entitled to make part deliveries. In case of volume deliveries, under-deliveries and over-deliveries of up to 5% are deemed acceptable.

- 4.3 Our obligation to fulfil an order only arises when the Customer has fulfilled all of the obligations required for delivery to be made, and in particular has provided us with all of the information and documents required to fulfil the order, and paid any agreed prepayment.
- 4.4 We will honour delivery periods and dates where possible. Unless expressly agreed as binding, delivery periods and dates are non-binding and are always to be understood as estimations of the time of provision and delivery to the Customer.
- 4.5 A delivery period is honoured if the goods have left our works, or their readiness for shipment has been communicated, before expiry of the period. If the Customer requests changes or additions to the order after order confirmation, the delivery period will be extended by a reasonable period. The same applies in case of unforeseeable circumstances that are beyond our control, e.g. force majeure, strikes, lockouts, or delays in deliveries of important raw materials, other materials or parts.
- 4.6 The Customer will only be entitled to withdraw from the contract on the basis of delayed delivery after granting a reasonable grace period of at least four weeks.
Withdrawal must be made in writing by recorded delivery.
The right of withdrawal only applies to the part of the delivery or service that was delayed.
- 4.7 Except in cases of wilful intent or gross negligence, compensation claims of the Customer are excluded in all cases of delayed delivery or non-delivery, including after expiry of the grace period.
- 4.8 If delivery is not possible due to supply difficulties and/or price increases by our suppliers, we will be entitled to withdraw from the contract without obligation to provide any compensation whatsoever.
- 4.9 Our liability for loss or damage resulting from delayed delivery is limited to 0.5% of the value of the delayed delivery per week, up to a maximum of 5% of the value of the part of the delivery that was not delivered on time.
- 4.10 If the Customer does not take delivery of goods that are delivered on time, the goods will be stored for a maximum of six weeks at the Customer's risk and expense. The Customer will bear the cost of storage. We will also be entitled to insist on fulfilment of the contract or, after granting a reasonable grace period, to withdraw from the contract and dispose of the goods otherwise.

5. Transferral of Goods

- 5.1 Goods are delivered ex works unless otherwise agreed in writing. The Customer is obliged to take delivery of the goods. Risk is transferred to the Customer as soon as the goods are handed over to the carrier or other person responsible for shipping or, in case of delayed acceptance as soon as they are ready for shipment.
This also applies in case of part deliveries. Unless otherwise agreed goods are sold "ex works" in the meaning of Incoterms 2020.
- 5.2 The Customer is obliged to take possession of the goods within five working days of receipt of our notification that the goods are ready for delivery. In case of failure to take delivery we will be entitled to enforce our statutory rights resulting from delayed acceptance.

6. Retention of Title

- 6.1 We retain ownership of the goods until the purchase price has been paid in full.
The Customer bears all risk in such retained goods, in particular the risk of destruction, loss or deterioration.
- 6.2 The Customer is entitled to adapt and process the delivered goods in the course of regular business operations. In case of adaptation, processing or combining of goods subject to retention of title, our rights of ownership extend to the new items.
- 6.3 The Customer is entitled to resell the delivered goods in the course of regular business operations. The Customer assigns to us all claims and security interests resulting from resale of the goods, in lieu of payment, until the purchase price has been received in full. The Customer is obliged to note the assignment in its accounts. If the Customer defaults on payment, we will be entitled to inform the purchaser of the resold goods of the assignment of the goods, and to demand payment directly to us. In such cases the Customer is obliged to provide us with details of the purchaser.
- 6.4 Goods subject to retention of title may not be pledged or otherwise assigned as security to a third party without our express written agreement. The Customer must notify us of attachment of the goods by a third party without delay. The Customer is also obliged to inform us without delay if it files for bankruptcy or if insolvency proceedings are opened against it, so that we can assert our title to the goods.
- 6.5 Delivered goods that are subject to retention of title must be properly stored and adequately secured against all risks foreseeable in the course of normal business operations.
- 6.6 We are entitled to renounce our title to the goods by written declaration at any time.

7. Quality and Features of Products

- 7.1 The object of sale is the products specified in the order confirmation, in the quantity stated. If successive delivery of products to the Customer has been agreed, the agreed part deliveries will also be stated in the order confirmation.
- 7.2 The technical properties of the object of sale are stated in the technical specifications included in the order confirmation. Permitted tolerances and deviations are also defined in these specifications. If this is not the case, unavoidable deviations and those that do not render impossible or severely impair use of the product are deemed acceptable.
- 7.3 If a sale takes place on the basis of a sample agreed between us and the Customer, the acceptable execution and quality will be the agreed mid-point of the quality criteria. At our request the sample must be expressly approved by the Customer. We do not guarantee any particular properties of products before approval of the sample by the Customer. Each party to the contract will retain a produced sample to be stored.
- 7.4 If production is carried out according to designs and documentation provided by the Customer, the Customer is solely liable for their functional and technical correctness.
- 7.5 We only guarantee that products supplied by us are suitable for a specific purpose when this is expressly agreed in writing. This includes suitability for use under special physical, chemical or meteorological conditions.
- 7.6 If it is necessary to manufacture a tool in order to produce the object of the contract, the tool in question will be manufactured or procured by us. The tool will remain our property. After the end of the business relationship, we will be free to transfer ownership of the tool to the Customer without compensation or to use it or dispose of it at our own discretion. If necessary, a separate tool contract will be concluded.
- 7.7 We accept no liability for infringement of third-party rights by the Customer's intended use of the goods.

8. Complaints, Warranty, Damages, Subsidiary Duties

- 8.1 The Customer must notify us in writing of defects without delay following receipt of the goods, at the latest within eight days, and in the case of latent defects within three days of discovery. Adequate reasons must be given for the complaint and documented. This obligation applies regardless of any separately agreed inspection of dispatched goods by us.
- 8.2 The maximum warranty period is six months from taking delivery. The Customer must prove the existence of any defects. Section 924 ABGB (General Civil Code) is excluded.
- 8.3 The limitation period is one month after the expiry of the warranty period.
- 8.4 Minor technical changes as well as deviations from drawings and catalogues are deemed approved in advance.
- 8.5 In cases of proven defects the warranty is limited to remedy of the defect, delivery of new goods or supply of missing goods. Multiple repairs and replacement deliveries will be permitted. Termination of contract and price reduction claims are excluded.
- 8.6 The warranty obligation becomes void if delivered goods are improperly transported, stored or processed.
- 8.7 In order for defects to be rectified under the warranty, the Customer must deliver the goods to us and collect them at its own expense and risk. If the Customer insists on repairs on site, we will invoice the Customer for travel expenses.
- 8.8 If the order confirmation contains a promise of guarantee, in all events this refers to a fictitious guarantee contract, meaning merely a warranty agreement that is part of the main contract. In any event, the guarantee does not cover wearing parts or damage caused by unsuitable or improper use, normal wear and tear, or incorrect or negligent handling or storage. The promise of guarantee means only that we are responsible for defects - excluding in the cases described above - that arise within the agreed guarantee period following delivery, and for which claims are enforced within that period.
- 8.9 We will only be liable for damage caused by gross negligence or wilful intent, unless this breaches compelling law or is otherwise provided for in these GTCS. This limitation of liability does not apply to personal injury claims. We will not be liable for indirect damages, lost profits, lost interest, lost savings, consequential damages or pecuniary loss, or damages arising from claims made against the Customer by third parties. In cases of gross negligence, liability is limited to the value of the goods delivered, up to a maximum of the sum covered by our insurance.
- 8.10 The Customer must provide proof that we are culpable for damage.
- 8.11 Regardless of culpability, liability in case of fraudulent non-disclosure of a defect, arising from the transfer of a guarantee, and under the Produkthaftungsgesetz (Product Liability Act) remains unaffected.
- 8.12 Claims for recourse in the meaning of section 12 Product Liability Act are excluded, except where the Customer provides proof that the defect is attributable to us and is a result of gross negligence at the least. In any event, the Customer must conclude agreements with its customers that exclude recourse or at the least reduce it to the statutory limit.

9. Data Protection

- 9.1 We and the Customer are obliged to comply with the provisions of the Austrian Datenschutzgesetz (Data Protection Act), the EU General Data Protection Regulation (GDPR) and all other statutory confidentiality obligations.
- 9.2 We process the personal data required for the purposes of fulfilling the contract. Detailed information related to data protection law (privacy statement) in accordance with Art. 13ff GDPR can be found on our website at <https://www.faigle.com/en/privacy-notice> or requested by e-mail to dataprotection@faigle.com.
- 9.3 The Customer has a duty to take all required data protection measures, in particular those in the meaning of the GDPR (e.g. obtaining declarations of consent from data subjects) so that we may process personal data for the purposes of the contractual relationship.

10. Non-Disclosure

The Customer undertakes to keep confidential and not disclose any trade secrets of which it becomes aware in the course of the business relationship, in particular with regard to patents and production methods. Trade secrets include in particular information which we expressly indicate as secret. The Customer has a duty to ensure that its staff adhere to this non-disclosure obligation.
The non-disclosure obligation will remain valid after the contractual relationship has ended.

11. Court of Jurisdiction, Choice of Law, Language of Contract

- 11.1 The court with subject-matter jurisdiction in A-6800 Feldkirch will have exclusive jurisdiction in all disputes arising from and in connection with concluded contracts of sale and these GTCS.
- 11.2 Austrian substantive law applies to the contractual relationship, excluding international conflict of law rules (e.g. IPRG, ROM I-VO) and the UN Convention on Contracts for the International Sale of Goods.
- 11.3 The language of contract is German.

12. Severability

If provisions of these GTCS are without legal force, or are or become invalid and/or void, this does not affect the legal force or validity of the remaining provisions. In such cases, a legally enforceable, valid provision will be deemed agreed that - as far as possible and legally admissible - has the equivalent economic effect as the provision to be replaced.

13. Final Provisions

- 13.1 All legally binding declarations must be sent in writing to the most recent address provided in writing by the other party to the contract. If a declaration is sent to the most recent address provided in writing, it will be deemed to have been received by the other party.
- 13.2 The headings given to individual sections are intended solely to provide an overview and are therefore not to be included in the construction or interpretation of the contract.
- 13.3 Assignment of individual rights and duties arising from these GTCS and the concluded contracts of sale is only permitted with the express written agreement of the other party to the contract.