

Ferrotec Europe GmbH General Terms and Conditions of Sale and Supply

Status at: January 2017

Section 1 General, Scope of Application

The following General Terms and Conditions of Sale and Supply (in the following "GTCs") apply to all business relationships of Ferrotec Europe GmbH (in the following "Ferrotec") with its customers. However, they only apply where the customer is an entrepreneur within the meaning of section 14 German Civil Code (Bürgerliches Gesetzbuch - BGB), a legal entity under public law or a special public fund (öffentlich-rechtliches Sondervermögen).

No terms and conditions used by the customer apply. Such conditions will not become an integral component of the contract either if Ferrotec, despite having the knowledge of contrary conditions of the customer or conditions of the customer departing from these GTCs, confirms an order of the customer's or performs delivery to the customer without reservation.

The word "Products" will be used in the following for all products and services provided by Ferrotec.

Section 2 Offer, Conclusion of Contract, Reservation of Right to make Changes

Ferrotec's offers are non-binding and may be changed without notice unless they are expressly marked as binding or they contain a binding deadline by which an offer must be accepted.

The customer's order is a legally binding offer to enter into a contract. Unless stated otherwise therein, Ferrotec can accept the offer within 14 calendar days of its receipt.

Ferrotec will accept such offer in writing (e.g. by order confirmation or dispatch advice/advice that products are ready for collection) or by performing the service.

For the purpose of these GTCs and compliance with written-form requirements it is sufficient for communications to be sent by fax or email.

If Ferrotec advises the customer in connection with the conclusion of the purchase contract this will be subject to best knowledge; this does not give rise to a consultancy agreement. Data and information with respect to the suitability and area of application of the Products are non-binding and do not release the customer from its obligation to itself inspect and carry out tests with regard to the suitability of the Products delivered for the procedures and purposes intended by it.

Any oral agreements entered into before the written contract was concluded are not legally binding and are superseded in full by the written contract, unless the contract expressly states that they are to continue to apply and that they are binding.

Any individually negotiated terms – including those made verbally – take precedence over these GTCs. If proof is required of the content of the contract a written contract or written confirmation from Ferrotec's management is authoritative.

Ferrotec reserves the right to undertake minor changes customary in the business to the construction and specification, provided they are in the interests of technical progress and the customer can be reasonably expected to accept them.

Documents and prototypes made available by Ferrotec as a rule will only be considered to be approximate values unless it is stated expressly in writing that they are binding.

Offer documents, specifications and prototypes remain in the ownership of Ferrotec. Ferrotec retains ownership and copyright in documents (logos, photos, technical reports, presentations); they may not be used without Ferrotec's written consent.

Section 3 Payment Conditions, Default

All Ferrotec prices are EXW (Incoterms 2010) plus packaging costs and postage and other taxes, customs duties, fees and charges, unless agreed otherwise. Statutory VAT is not included in the Ferrotec prices and will be recorded separately on the invoice in the respective amount.

Ferrotec reserves the right to amend the prices accordingly if, once the contract has been concluded, costs increase or decrease, in particular owing to changes in the price of the materials and energy or changes in transport costs, unless delivery is to be made within two months of conclusion of the contract. Ferrotec will give due notice of the relevant price changes. Unless agreed otherwise, the customer will have to pay not only the agreed remuneration but also all necessary ancillary costs, such as travel costs, cost for transporting tooling and equipment and personnel allowances.

In each case remuneration is due for payment within 30 calendar days of invoicing and delivery or acceptance of the Products, if the latter is agreed in an individual case. In the case of new customers, Ferrotec is entitled to demand an advance payment of 10 % of the respective remuneration, due for payment within 14 days of the invoice being issued.

As a rule payments will be made by bank transfer. The customer will bear any transfer charges. Payment by bills of exchange may only be made after obtaining prior written consent from Ferrotec; in any event bills of exchange are only accepted on account of performance.

If the customer fails to meet the above payment deadline it is in default of payment, in particular without the need for a reminder, unless it did neither act intentionally nor negligently with regard to the default. During default, interest will accrue on the purchase price at the applicable statutory default interest rate. Ferrotec is also entitled to the standard default amount pursuant to section 288 subsection 5 sentence 1 German Civil Code (Bürgerliches Gesetzbuch - BGB). Ferrotec reserves the right to assert any further default damage. If payment by instalments has been agreed and if the customer defaults on payment of an instalment the balance of the debt from the contractual relationship will be due for payment immediately.

The customer only has the right to offset where (a) its counterclaim is either undisputed or has been ruled final and absolute by a court of law, where (b) such claim has been asserted through a court the claim is ready for a decision or where (c) such claim is synallagmatic to the principal claim.

If the financial situation of the customer deteriorates after conclusion of the contract or if a deterioration only becomes noticeable to Ferrotec once the contract has been concluded so that the payment claim of Ferrotec is in jeopardy Ferrotec may, subject to any further claims, revoke payment deadlines granted and make further deliveries dependent on advance payment or the grant of other securities. The same applies in the event of default with payment.

Section 4 Delivery Terms, Delivery Dates and Delay in Delivery

All Ferrotec deliveries to customers are made EXW (Incoterms 2010) (based on warehouse from which Ferrotec ships) unless otherwise agreed. The warehouse from which we ship is also the place of fulfillment.

At the request of the customer the Products will be sent to the final destination specified by the customer in which case the costs - including the costs for packaging - will be borne by the customer (cf. section 3 (1) of these GTCs). The dispatch mode and route will be at Ferrotec's discretion, unless otherwise agreed. The risk of accidental loss or accidental deterioration of the Products will transfer to the customer when the Products are handed over to the forwarder, carrier or other transporting entity. At the request of the customer, Ferrotec will take out transport insurance at its own cost. Any transport damage must be reported in writing to Ferrotec and the transport company shipping the Products, and if the loss or damage was not externally visible, within seven calendar days of delivery.

Part deliveries are permissible provided this is reasonable for the customer or the customer consents thereto.

Where it has been expressly agreed that the Products will be formally accepted, the statutory provisions for contracts for work and services (*Werkvertragsrecht*) will apply accordingly.

If the customer is in default of acceptance Ferrotec will be entitled to store the Products at the expense and risk of the customer. Fixed compensation of 100 EUR per pallet and full week will be paid starting from the delivery date - or in the absence of a delivery date - when notification is issued that the Products are ready to be dispatched. However, the customer retains the right to prove that the actual costs are lower.

A delivery date will be specified at the due discretion of Ferrotec and is only approximate unless a fixed delivery date has been expressly promised or agreed.

Delivery dates will be deemed to have been met if, by this date, the Products have left the warehouse or are ready for dispatch and the customer has been notified accordingly.

Observance of the delivery dates and deadlines is contingent upon the customer properly and punctually satisfying all obligations incumbent upon it and also subject to Ferrotec having been supplied in a correct and timely manner. Should it become apparent that delays are likely Ferrotec will notify the customer as soon as possible. Delivery dates/times will be extended automatically by an appropriate period if the customer does not fulfil its contractual obligations, other duties to cooperate or other obligations, whereby it may always exploit the payment deadlines to the maximum.

Events caused by force majeure (e.g. any disruption to operations, fire, natural disasters, weather, flooding, strikes, lockout, war, insurgency, terrorism, transport delays, lawful lockouts, shortage of energy, raw or human resources, delays in the issue of necessary official permits, official/sovereign measures, embargoes) and other events not foreseeable on the date on which the contract was concluded for which Ferrotec is not responsible entitles Ferrotec to postpone the delivery. If such events occur, even if they are temporary, the delivery dates will be extended automatically by the duration of the event plus a reasonable start-up period. This applies irrespective of whether these events were caused by force majeure at Ferrotec, a supplier or another subcontractor of Ferrotec. If a force majeure event lasts for more than eight weeks each contractual party may withdraw from the contract. Ferrotec is also entitled to withdraw from the contract if such events make it substantially more difficult or impossible for Ferrotec to perform the obligations under the contract and if such occurrences are more than just temporary. Any delays of the customer in cooperating will entitle Ferrotec to postpone delivery. The provisions on frustration of contract (section 313 German Civil Code - *Bürgerliches Gesetzbuch - BGB*) remain unaffected hereby.

Default on delivery will be determined as provided for in statute. In any event the customer must send a reminder. If Ferrotec is in default

with delivery the customer may demand reimbursement of any loss incurred owing to the delay in accordance with statutory provisions in addition to supply. However, provided Ferrotec has not acted with intent or gross negligence, this claim is restricted to 0.5 % of the value of the delivery concerned per week of default and to a maximum of 5 % of the value of the delivery concerned. This has no effect on the customer's right to withdraw from the contract after a reasonable period has elapsed and/or to compensation for non-fulfilment in accordance with section 8, unless Ferrotec is not responsible therefor. In all other respects, the statutory provisions apply.

Section 5 Reservation of Title

Ferrotec reserves title in the Products supplied until all amounts due to it under the business relationship with the customer have been settled in full; In this respect all deliveries are treated collectively. Where Ferrotec supplies on current account reservation of title serves as security for the amounts due to Ferrotec.

The customer is obliged to handle the Products with care; in particular, the customer is obliged to insure the Products adequately against the risk of fire, water damage and theft on a replacement value basis at its own cost.

In the event of seizure or any other third-party intervention, the customer will notify Ferrotec in writing without undue delay so that Ferrotec can initiate legal proceedings pursuant to section 771 Code of Civil Procedure (*Zivilprozessordnung - ZPO*) in order to prevent the execution of a judgment. If the third party is unable to reimburse the costs incurred by Ferrotec in court and out of court for a claim pursuant to section 771 Code of Civil Procedure (*Zivilprozessordnung - ZPO*), the customer is liable for the shortfall incurred at Ferrotec.

If the customer combines or mixes any Products in which Ferrotec has (joint) title with other items to form a new single item in such a way that one of the new items must be regarded as the principal item, Ferrotec has *pro rata* (joint) title in the new item thus created, such (joint) title being the ratio of the value of the Products (co-)owned by Ferrotec to the value of the combined or mixed items at the time of such combining or mixing, and the customer will transfer title and possession therein here and now. Ferrotec hereby accepts this assignment and transfer. The customer will hold the item created by combination or mixing in safekeeping for Ferrotec free of charge. If the customer or a third party acting on behalf of the customer processes or modifies the Products which Ferrotec (co-)owns, this is deemed to have been carried out for Ferrotec. If the customer acquires sole title in the new item created by way of such processing or modification, the parties are deemed to have agreed that the customer will transfer to Ferrotec title therein in the ratio of the value of Products which Ferrotec owns to the value of the combination or modification and Ferrotec will accept such transfer. The customer will hold Products in which Ferrotec has sole or co-title which has been thus created in custody for Ferrotec free of charge. If the Products in which Ferrotec has title have not been inseparably combined or mixed with other items or otherwise processed or modified since supply, their value at the time of combining, mixing, processing or modification is deemed to be the amount which Ferrotec billed for the Products including statutory value-added tax.

The customer may resell the Products in the ordinary course of business. The customer will reserve title as against its buyer until payment has been made in full. The customer hereby assigns to Ferrotec any claims which may arise against its customers from resale of the goods supplied by Ferrotec together with all ancillary rights until such time as all claims have been satisfied in full. Ferrotec hereby accepts this assignment. If the customer and its buyer operate a current account, the customer will assign to Ferrotec the acknowledged balance in order to secure Ferrotec's claims and, in the event that the customer's buyer should become insolvent, the "causal" balance from the current account. Ferrotec hereby accepts this assignment. This clause on the assignment of claims also applies to the item newly created by processing, modification, combination or mixing. The assignment applies

to the customer's entire claim against its buyer in each case. The customer has a revocable right to collect any claims assigned. On request from Ferrotec the customer will notify its customers of the assignment to third parties and provide Ferrotec with any information or documents which it needs to assert its rights.

At the customer's request, Ferrotec will release what securities it sees fit in as far as the realisable value of the securities exceeds the value of the claims to be secured by more than a total of 10 %.

If the reservation of title is invalid or unenforceable under the law of the country in which the Products are located, the parties will be deemed to have agreed to whatever security under the law of that country corresponds most closely to a reservation of title. The customer will assist and support Ferrotec in arranging the security. If the reservation of title is not valid under the law of the country in which the Products are located unless it has been duly registered with an authority or entered in a register, the customer will arrange for or assist with such registration in Ferrotec's favour without undue delay as soon as the Products have arrived in that country and will notify Ferrotec thereof unbidden.

Section 6 Customer Warranty Claims

The customer's rights in respect of quality and legal title (including incorrect delivery and insufficient quantities, faulty assembly or instructions) are subject to statutory requirements unless otherwise stated or qualified in these GTCs.

Unless otherwise agreed, the quality of the Products due under the contract will be solely as set out in the Ferrotec product specifications which were valid at the time the contract was concluded; for standard products these are derived from Ferrotec's data sheet applicable at the time. Ferrotec expressly does not assume any warranty for the Products being suitable for the purpose intended by the customer, unless otherwise expressly agreed.

The customer will inspect the goods immediately after receipt provided this is possible in the usual course of business and will inform Ferrotec in writing of any obvious defects without undue delay at the latest however within seven working days of delivery. The customer must notify Ferrotec in writing of any defects, which cannot be recognised in the context of its due course of business, at the latest within three working days after discovery of the defect. Otherwise the delivery will be deemed to have been accepted unless Ferrotec has fraudulently concealed defects. The Products must be inspected in accordance with the specifications laid out by Ferrotec. If the customer does not carry out a due and proper inspection of the Products and/or issue due and proper notice of defects, this will invalidate any warranty obligation which Ferrotec may have in respect of the defect concerned.

The warranty will lapse if changes are made to the Products by the customer itself or by third parties unless the customer proves that there is no causal link between the changes carried out and the defect which occurred. The customer alone is responsible for integrating the Products in the technical, structural and organisational set-up (responsibility for systems integration).

Claims as to defects do not exist if the defect results from inappropriate or unsuitable use or storage, inappropriate or unsuitable transport, faulty or negligent handling.

If Ferrotec has supplied defective goods, Ferrotec has the right and the obligation to choose to either render subsequent fulfilment by remedying the defect (improvement) or supplying a Product free of defects (replacement). If Ferrotec supplies a replacement, the customer must return the defective items to Ferrotec as provided for by statute.

The customer is entitled to rescind the contract or to reduce the purchase price if the subsequent delivery is unsuccessful, the customer cannot be reasonably expected to accept it, if it is refused by Ferrotec without justification or is not executed within a reasonable deadline

set by the customer. Withdrawal from the agreement is not permitted in the event of defects which are only minor.

In the event of defects the customer has compensation claims pursuant to statute and section 8 of these GTCs.

Section 7 Legal Defect

In as far as rights of third parties prevent the contractual use of the Products the customer will inform Ferrotec in writing without undue delay of the assertion of such rights of third parties and will give Ferrotec all powers of attorney and grant all authorities required to defend the Products against the rights of third parties asserted at its own costs.

In as far as the rights of third parties prevent the contractual use of the Products Ferrotec will, at its discretion, introduce appropriate measures to eliminate the rights of third parties or the assertion thereof, procure the rights of use from the third party at its own expense or replace the Products (= subsequent fulfilment) in such a manner that it no longer infringes the rights of third parties if and in as far as the compliance of the Products with the contract is not impaired.

The customer is entitled to rescind the contract or to reduce the purchase price if the customer cannot be reasonably expected to accept subsequent fulfilment, it is refused by Ferrotec or is not executed within a reasonable deadline set by the customer. The customer may not withdraw from the contract where impairment of contractually agreed use of the Products is immaterial.

A claim for compensation in accordance with statutory regulations and the regulations set out in section 8 of these GTCs can only be made if Ferrotec knew or ought to have known of the contradictory third-party rights.

Section 8 Liability for Compensation

Unless otherwise set out in these GTCs, Ferrotec is liable for a breach of contractual and non-contractual duties as provided for by statute. Ferrotec is liable for intent and gross negligence and the intent and gross negligence of its legal representatives and vicarious agents. However, if Ferrotec, its legal representatives or vicarious agents has (have) not acted with intent, liability is restricted to foreseeable damage typical for this type of contract.

Ferrotec has unlimited liability for negligent injury to life, limb and health caused by Ferrotec, its legal representatives or vicarious agents and for wilful failure to disclose a defect or if Ferrotec has assumed a guarantee which – if breached – renders it liable for compensation. In the latter case the extent of liability is based on the wording of the guarantee.

Ferrotec is also liable if it, its legal representatives or vicarious agents negligently breach duties which must be fulfilled before the contract can be executed in the first place and which the customer relies on or is entitled to rely on being fulfilled. However, if Ferrotec, its legal representatives or vicarious agents has (have) not acted with intent, liability is restricted in amount to foreseeable damage when the contract was entered into and typical for this type of contract.

This has no effect on mandatory liability, in particular under the Product Liability Act (Produkthaftungsgesetz) in its current valid version.

Where Ferrotec's liability is excluded or limited pursuant to the above provisions, the same will apply to the personal liability of Ferrotec's corporate bodies, legal representatives, staff and vicarious agents.

Section 9 Limitation Period

Notwithstanding section 438 subsection 1 no. 3 German Civil Code (Bürgerliches Gesetzbuch – BGB), the limitation period for claims – including non-contractual claims – for quality defects and defects in title is one (1) year from delivery. This limitation period applies to all contractual and non-contractual compensation claims of the customer which are based on defects in the Products, unless application of the statutory limitation period would mean a shorter limitation period in an

individual case. The statutory provisions regarding suspension and delay in time bar/ suspended expiry and the limitation periods under the Product Liability Act (Produkthaftungsgesetz) remain unaffected thereby.

The limitation period defined in section 9 subsection 1 does not apply to the cases described in section 8 subsections 1 to 4. The statutory limitation periods apply exclusively to these compensation claims of the customer.

In order to execute the contract Ferrotec will collect personal data and save it for processing exclusively for the execution of this agreement.

Stuttgart, 1 January 2017

Section 10 Software Licence

Ferrotec grants the customer the non-exclusive right to use, i.e. install, load and run software in accordance with the provisions below. The right of use is limited to the agreed period, or in absence of such an agreed period the software may be used for an indefinite period.

The software may be used exclusively in machine-readable form (object code). The source code is not the subject of the contract and is not supplied with the software.

The customer may only make a copy of the software which may be used exclusively for backup purposes (backup copy).

Apart from cases under section 69e Copyright and Right Act (Urheberrechtsgesetz) (decompiling), the customer may not modify, reverse engineer, translate or extract parts of the software. The customer may not remove alphanumeric or other markings from the data carriers and will transfer them to each backup copy without change.

Section 11 Information on product safety measures

The customer must inform Ferrotec in writing without undue delay if an official body orders measures related to product safety requirements (e.g. official market monitoring such as product withdrawal or recall) to be carried out at or against the customer or if the customer intends to carry out such measures (e.g. reports to the official market monitoring body) itself.

Section 12 Export

The customer undertakes to export the goods and technical information supplied by Ferrotec only subject to the relevant export conditions.

Section 13 Choice of Law and Jurisdiction

The business relationships between us and the customer are subject solely to the law of the Federal Republic of Germany. The UN Convention on the International Sale of Goods (CISG) is not applicable.

Unless otherwise expressly agreed, the place of performance will be Ferrotec's registered place of business.

If the customer is an entrepreneur, a legal entity under public law or a special public fund (öffentlich-rechtliches Sondervermögen) the exclusive place of jurisdiction for all disputes arising from and in connection with the business relationship between Ferrotec and the customer is the registered office of Ferrotec in Frankfurt am Main; this also applies internationally. However, Ferrotec may bring action against the customer at the customer's registered office or at the place of performance. This provision has no effect on mandatory statutory provisions on exclusive places of jurisdiction.

Section 14 Final Provisions

If a provision of these GTCs is not legally valid the validity of the remainder of the agreement remains unaffected.

Instead of any GTCs which are invalid or not incorporated in the contract, statutory provisions apply (section 306 subsection 2 German Civil Code – Bürgerliches Gesetzbuch - BGB). In other respects the parties will replace the provision which is invalid with a valid provision which reflects as closely as possible the economic purpose of the invalid provision, if no supplementary interpretation of the contract takes precedence or is possible.