

# **General Terms and Conditions of Sale, Delivery and Payment of Ferratec Werkzeug- & Formenbau Kunststofftechnik GmbH**

## **- Commercial Business Customers –**

Version dated 27 August 2013

### **1. General Provisions**

- a) All offers, deliveries and services by Ferratec Werkzeug- & Formenbau Kunststofftechnik GmbH (hereinafter also referred to as „Ferratec GmbH“) to commercial business customers (hereinafter also referred to as “Customer”) are exclusively subject to the following General Terms and Conditions of Sale, Delivery and Payment, unless expressly agreed otherwise. They shall also apply to all future business relations with Customer, even if not expressly referred to by Ferratec GmbH at the time of conclusion of the contract.
- b) The Customer’s general terms and conditions of business, which deviate from these General Terms and Conditions of Sale, Delivery and Payment are rejected; they will not become part of a contract. They will also not become part of a contract if Ferratec GmbH accepts an order from the Customer or executes such orders without repeated rejection of such terms. Even if Ferratec GmbH refers to a letter containing general terms and conditions of the Customer or a third party, this does not constitute acceptance of such terms and conditions.

### **2. Offer and Conclusion of Contract**

- a) Ferratec GmbH’s offers are subject to change and non-binding, unless they expressly state a commitment period. A contract shall be deemed concluded only after Ferratec GmbH has issued a written order confirmation, or has effected delivery of the goods ordered, or has performed services without separate confirmation.
- b) Information given by Ferratec GmbH about deliverables and/ or services (e.g. weights, measures, utility value, capacity, tolerances, and technical data), as well as Ferratec GmbH’s illustrations and presentations thereof (e.g. drawings and images), shall only be approximately representative, unless precise conformity is required for applicability for the contractually agreed purpose. They are not guaranteed characteristics, but descriptions or designations of the delivery or service. Deviations representing technical improvements or deviations required for legal reasons or which are commercial practice shall be permissible, if and insofar applicability for the contractually agreed purpose is not impaired.

### **3. Customer’s Obligation to Cooperate**

- a) In preparation of execution of the order and prior to the agreed time of execution, Customer must make available to Ferratec GmbH in a timely manner any and all documents, information and materials required for execution of the order.

- b) If the Customer provides parts, substances or other materials for the execution of its order, the Customer shall be responsible for their suitability for use. If these are unsuitable, inadequate or unusable for the order, and this is not obvious to Ferratec GmbH, the Customer shall insofar have no warranty or liability claims against Ferratec GmbH. Furthermore, the Customer is obligated to compensate Ferratec GmbH for any damage caused to it by the unsuitability, inadequacy or impracticality of the materials as invoiced by Ferratec GmbH, or has to compensate any additional expense.
- c) The Customer will bear the costs for all arrangements to be made and for performance of its obligation to cooperate in accordance with the provisions of this section 3.

#### **4. Goods manufactured according to Customer's Specifications**

- a) In the event of manufacture in accordance with drawings, samples or other instructions of the Customer, Ferratec GmbH shall provide no warranty and assume no liability with regard to the functionality of the products and/or other defects, to the extent they are based on the Customer's specifications.
- b) The Customer shall hold harmless and indemnify Ferratec GmbH from all third party claims based on damages caused by products, insofar as these products are based on Customer's drawings, samples and other specifications. This also applies to product liability claims.
- c) The Customer guarantees to Ferratec GmbH that the production and delivery of the goods manufactured in accordance with Customer's specifications does not violate third party industrial property rights. In case of assertion of such industrial property rights by third parties against Ferratec GmbH, after consulting the Customer, Ferratec GmbH shall have the right to rescind the contract, unless the third party waives assertion of its industrial property rights against Ferratec GmbH by written declaration to Ferratec GmbH within a reasonable period of time. The Customer is obligated to reimburse Ferratec GmbH for any and all damages and costs caused by assertion of the industrial property rights. In case of cancellation of the contract, Ferratec GmbH will be entitled to receive adequate compensation for work on the product, respectively, services rendered, on the basis of its invoice.
- d) Unless agreed otherwise, Ferratec GmbH retains exclusive title to, and ownership of, all moulds, patterns, tools, construction documents and design specifications which are necessary for execution of the order and which have been produced or commissioned by Ferratec GmbH. The Customer shall have no claim to these items, even if it has participated in the costs for production of such moulds, patterns, tools, construction documents and design specifications. Ferratec GmbH shall have the right to destroy the respective moulds, patterns, tools, construction documents and design specifications two years after completion of the Customer's last order at the latest, unless otherwise agreed in writing, or unless specific permissions have to be obtained on the basis of agreements made. The Customer shall be informed at least four weeks prior to destruction of the items.
- e) Ferratec GmbH reserves title, all property rights, copyrights and other industrial property rights in and to any and all samples, drawings, tools, models and other documentation and information, whether physical or immaterial – also in electronic form – as well as other auxiliary devices. Without Ferratec GmbH's express permission, these may not be made available to or used for commercial purposes by third parties and must be returned to Ferratec GmbH upon request, together with all copies made, without delay.

## **5. Technical Modifications and Deviations in Quantity**

Unless expressly agreed otherwise, Ferratec GmbH reserves the right to effect modifications which are technically necessary or useful (in particular, with respect to construction, selection of materials and products, specifications, type and design), insofar as Customer has been informed of these modifications in advance and its interests have been taken into consideration.

## **6. Cancellation**

In case of justified cancellation of a contract for works and services by the Customer (Sec. 649 German Civil Code), Ferratec GmbH has a claim against the Customer for flat rate compensation (flat rate calculation of the difference between agreed compensation and expenses saved) in the amount of 10% of the order value. The Customer retains the right to prove to Ferratec GmbH that the actually incurred amount of the difference is lower; notwithstanding Ferratec GmbH's right to prove existence of a higher amount of difference.

## **7. Delivery/ Performance Dates and Periods, Delay, Self Supply Reservation**

- a) The prospective execution/performance dates and periods as notified by Ferratec GmbH are always approximate, unless a fixed period or date has been expressly promised or agreed. The agreed period for delivery or performance begins to run only after all commercial and technical issues have been clarified between the parties and the Customer has fulfilled all its obligations. This includes in particular the timely provision of documents, drawings, and other information, materials, additional parts and components necessary for the performance of the contract, as well as all necessary permits and approvals, with the necessary content and / or the agreed condition, and any agreed down payment having been made. Failure to comply with this will lead to an adequate postponement of the date, respectively, extension of the performance period with regard to the delivery or service to be effected by Ferratec GmbH. The same applies in case of Customer's request for modification of Ferratec's performance of the order.
- b) Ferratec GmbH shall also not be liable for delayed or impossible delivery caused by force majeure or other circumstances which were not foreseeable at the time of conclusion of the contract (e.g. all types of operational disruption, difficulties in the procurement of materials or energy, delays in transport, strike, lawful lockout, lack of manpower/labour, energy or raw materials, missing, incorrect or late delivery by suppliers), and for which Ferratec is not responsible.

Insofar as delivery or performance is substantially impeded or made impossible by such occurrences, and such occurrence is not merely temporary, Ferratec GmbH shall be entitled to rescind the contract.

In case of events which only temporarily prevent delivery or performance, the periods for delivery or performance or the agreed delivery dates shall be extended, respectively, postponed, by the term of the disruption plus a reasonable start-up period. The Customer has the right to rescind the contract by immediate written notice to Ferratec GmbH in case that acceptance of the delivery or performance becomes unreasonable due to the delay.

- c) If shipment has been agreed, the delivery period shall be deemed to have been met if the delivery item has been handed over to the carrier, freight forwarder or another third party commissioned with the transport.
- d) If shipment or acceptance of the delivery item is delayed due to reasons for which the Customer is responsible, the costs caused by the delay will be charged to Customer as of the beginning of the delay.
- e) Ferratec GmbH shall only be entitled to make partial deliveries if
  - partial delivery is reasonable for the Customer within the scope of the contractually agreed purpose,
  - delivery of the remaining goods ordered is ensured, and
  - the Customer does not incur substantial additional costs or efforts thereby (unless Ferratec GmbH agrees to assume such costs).
- f) If Ferratec GmbH defaults in the execution of the order, or if delivery / performance becomes impossible, regardless of the cause, Ferratec GmbH's liability shall be limited in accordance with Section 14 of these General Terms and Conditions.

## **8. Prices and Terms of Payment**

- a) All prices are in EUROS, and unless agreed otherwise, shall be ex Ferratec GmbH's plant ("ex works"), including loading the goods at the plant, however, exclusive of packaging and unloading. VAT at the respective statutory rate shall be added. Prices include neither taxes, nor charges, contributions or other public duties or ancillary costs such as, e.g., insurance, freight, cartage, installation, assembly and commissioning, unless expressly agreed otherwise.
- b) Unless otherwise agreed, rendering of customer services will be charged on a time and material basis in accordance with Ferratec GmbH's hourly rates, plus VAT. This also applies to working time spent, initiation, accommodation, travel expenses, baggage transport, tools, etc.
- c) Unless expressly agreed otherwise, prices shall be binding for a term of four months as of order confirmation. If no order confirmation is made, the order date shall be decisive. After that, Ferratec GmbH shall have the right to additionally charge proven cost increases to the Customer, while reasonably taking into consideration the Customer's interests.
- d) If, after conclusion of a contract, Ferratec GmbH becomes aware of a material deterioration of the Customer's financial circumstances (e.g. filing for bankruptcy proceedings, adverse credit information, or in case of payment default in the meantime), Ferratec GmbH reserves the right to effect outstanding delivery or performance only against cash in advance or reasonable security deposit, in which case potential deadlines for delivery or performance may be extended accordingly, respectively, dates may be postponed. If Ferratec GmbH has already delivered, it can demand immediate payment of its invoice.
- e) Payment in full shall be due upon delivery of the purchased object, respectively, in case of a contract for work and/or services, upon acceptance of such work or services. Unless Ferratec GmbH has expressly agreed to a specific date / period for payment, Customer will be in default with payment without any further notice by Ferratec GmbH thirty days after the due

date, and after receipt of an invoice or similar payment list, to the extent Customer has not effected payment. In case of defects, the Customer shall only have a right of retention to the extent this is adequately proportionate to the defects and the anticipated costs of supplementary performance, in particular, the costs for removal of the defect. If the Customer has not made payments when due, and the outstanding amount due is adequately proportionate to the value of Ferratec GmbH's performance and/ or delivery, the Customer shall not be entitled to claims and rights based on defects in function and/or performance.

If the Customer does not make payment at the due date, the outstanding amounts shall bear interest as of the due date in the amount of 5 percentage points above the respective base interest rate per annum; the right to claim higher interest and further damages in case of default is reserved.

## **9. Set-off, Retention and Assignment**

- a) The Customer may effect set-off only with undisputed or legally established claims. Apart from that, the right to set-off is excluded.
- b) The Customer shall only be entitled to retention rights as set forth in Sec. 273 German Civil Code and Secs. 369 et seq. Commercial Code, insofar as the claim substantiating these rights is based on the same legal relationship as Ferratec GmbH's claim. This restriction shall not apply if the Customer's counterclaims are undisputed or have been legally established. The Customer is not entitled to satisfy its claims according to Sec. 371 Commercial Code.
- c) The assignment of any and all claims the Customer may have against Ferratec GmbH to third parties requires Ferratec GmbH's express written permission. Sec. 354a Commercial Code remains unaffected.

## **10. Place of performance, Risk Transfer, Acceptance**

- a) Place of performance for all obligations arising from the contractual relationship shall be Hoesbach, unless agreed otherwise.
- b) Method of shipment and packaging shall be determined at Ferratec GmbH's due discretion.
- c) The risk of accidental loss or accidental deterioration shall pass to the Customer upon handing over the delivery item to the carrier, freight forwarder, or other third party designated to effect shipment. This also applies if partial delivery is made, or if Ferratec GmbH has assumed additional services and/ or performance, e.g. costs of transportation, delivery or assembly.

Insofar as acceptance has been agreed on (in case of works contracts), it shall be decisive for the transfer of risk. Acceptance has to take place without delay on the agreed acceptance date, alternatively, after Ferratec GmbH's notice of readiness for acceptance.

- d) Insurance covering transport, theft, breakage, damage arising from fire and water or covering other insurable risks shall only be taken out at Customer's express instruction and at Customer's expense.

- e) Should delivery or acceptance be delayed due to circumstances for which the Customer is responsible, the risk shall pass on the day of notification to the Customer of readiness for shipment, respectively, acceptance.
- f) Storage costs arising after transfer of risk shall be borne by the Customer. If Ferratec GmbH stores the goods, storage fees shall amount to 0.25% of the invoice amount for the stored goods for each full week. The right to claim further or lower storage costs remains reserved.

## **11. Retention of Title**

- a) Ferratec GmbH retains ownership in all goods delivered until all payments under the contract have been received.
- b) Prior to complete payment of the aforementioned claims of Ferratec GmbH, the Customer is entitled to continue using the goods in the ordinary course of business, unless a prohibition of assignment has been or will be agreed with third parties for claims which have been assigned to Ferratec GmbH in advance in accordance with Section 11 c below. Pledging or collateral assignments require Ferratec GmbH's prior written approval, to the extent its rights are affected. In the event of seizure, confiscation / sequestration or other disposition by third parties, the Customer must immediately inform Ferratec GmbH.
- c) As further security for Ferratec GmbH's claims as set forth in Section 11 a hereof, the Customer hereby assigns to Ferratec GmbH its claims from the resale of the original or modified products against Customer's contractual partner or third parties, including claims from open invoices or current accounts. Ferratec GmbH hereby accepts such assignment.

Assignment shall be effected in the amount of the invoice value, including value added tax, of the respective products sold.

- d) The Customer is authorized to collect future claims assigned in accordance with Section 11 c above in the ordinary course of business. This includes the direct debiting of claims, provided, however, the Customer ensures by prior agreement with its bank that the amounts received are exempt from the bank's lien, and the Customer thus remains able to meet its obligation to transfer its proceeds to Ferratec GmbH at any time. This authorization of collecting assigned future claims expires as soon as the Customer defaults in the payment of its obligations to Ferratec GmbH. Upon expiration of this authorization, Ferratec GmbH is entitled to disclose the assignment and to demand from Customer any and all required information and documentation for assertion of the assigned claims.
- e) As long as Ferratec GmbH retains ownership of the goods delivered, any processing or handling which results in the production of new movable goods shall also be made on behalf of Ferratec GmbH, however, without obligating it in any way. Ferratec GmbH shall thus acquire a co-ownership share in the new object. The co-ownership share shall be determined based on the proportional value of the contributed goods subject to retention of ownership, and the goods contributed by the Customer or third parties at the time of contribution. Value added through refining / processing will not be taken into consideration; such value added shall be due to Customer. The Customer's right conferring prospective entitlement to ownership of goods supplied under reservation of title is conferred to Ferratec GmbH's co-ownership share; the Customer is therefore entitled to make dispositions in respect of the co-ownership share in accordance with the above provisions.

- f) To the extent that the realisable value of the securities granted to Ferratec GmbH exceeds its secured claims by more than 10 %, whether solely on the basis of this reservation-of-title provision or together with other claims, Ferratec GmbH shall be obliged to release securities of its own choice upon the Customer's request.
- g) In the event of conduct that constitutes a breach of contract on the part of the Customer, in particular in case of payment default, Ferratec GmbH shall have the right to take back the delivered goods subsequent to a reminder, and the Customer shall be obliged to surrender the goods.
- h) Filing for initiation of insolvency proceedings shall entitle Ferratec GmbH to rescind the contract and demand immediate return of the delivered object.

## **12. Inspection Obligation, Warranty**

- a) The warranty period shall be one year, commencing with delivery, respectively, acceptance, insofar as acceptance is necessary.

This does not apply in case of intent or fraudulent concealment of a defect, in case of deviation from a potential guaranty assumed by Ferratec GmbH, in case of defects to building structures, nor in case of delivered products which, in line with their customary use, are used for a building structure and which have caused it to be defective. In these cases, the mandatory periods stipulated by law shall apply. The mandatory legal provisions with regard to expiration, suspension and recommencement of the warranty period shall remain unaffected.

- b) The Customer is obliged to immediately inspect delivery items upon delivery at the agreed destination, respectively, if collection by the Customer has been agreed, upon taking over of the goods, with regard to defects, damage, and completeness. The delivery shall be deemed accepted with regard to obvious defects or other defects, which could have been detected upon immediate careful inspection, unless Ferratec GmbH is immediately notified in writing of potential complaints. With regard to other defects, the delivered goods shall be deemed to be accepted by the Customer, unless Ferratec GmbH receives a defect complaint within 7 days after the defect is revealed. However, if the Customer was able to recognise the defect in the course of normal use at an earlier point in time, such earlier point in time shall determine the beginning of the period for lodging the complaint.

Upon Ferratec GmbH's request, rejected goods shall be returned to it, freight and carriage paid. In case of justified defect complaints, Ferratec GmbH shall reimburse the costs for the least expensive manner of shipment. However, this does not apply insofar as costs are increased due to the fact that the delivery item is located at a location other than that of its intended use.

- c) In case of delivery of a defective product or creation of a defective work, Ferratec GmbH shall, at its own discretion and within a reasonable period of time, effect supplementary performance by means of remedy of defects or delivery of an item free from defects or new production of the work. Ferratec GmbH is entitled to request Customer to return a product, which Customer has claimed to be defective for the purpose of inspection for defects.

If the supplementary performance fails, i.e. in case of impossibility, unreasonableness, refusal or unreasonable delay with regard to the supplementary performance, the Customer has the right to rescind the contract or to demand reasonable reduction of the purchase price.

- d) Insofar as Ferratec GmbH is obliged to make compensation for damages in accordance with the statutory provisions, this obligation is limited in accordance with Section 14 hereof.
- e) Warranty shall be excluded in case of contracts for delivery of used movable goods.
- f) Objects delivered or produced by Ferratec GmbH will be free from defects if they have the agreed qualities and characteristics, or, in case of lack of a quality agreement, have the qualities which are comprehensively set forth in Ferratec GmbH's technical data sheets, specifications or drawings, or which show merely insignificant deviations from the characteristics / qualities as agreed or described. The Customer's information on the use of a product shall only be authoritative if Ferratec GmbH has expressly confirmed to the Customer in writing at the time of conclusion of the contract that the objects delivered or produced are fit for the use intended by Customer. General information on the use, or practical application examples given by Ferratec GmbH in product brochures or other advertising material shall not release Customer from its obligation to carefully examine whether the product / the work is suitable for the specific use as intended by the Customer.
- g) Ferratec GmbH does not assume warranty for wear and tear due to normal use and for defects which have been caused due to improper use, improper handling or storing, or by failure to observe the manufacturer's instructions, as well as assembly or operating instructions. Warranty rights shall expire in case of improper handling by the Customer and by third parties commissioned by the Customer.
- h) Costs for Ferratec GmbH's examination activities arising from potential unjustified defect related complaints shall be borne by the Customer. Flat rate cost charges for defect related complaints by the Customer shall not be recognised.
- i) In case of defective components produced by another manufacturer which cannot be remedied by Ferratec GmbH for licensing reasons, Ferratec GmbH, at its own discretion, will assert its warranty rights against the manufacturer or supplier for the Customer's account or assign such claims to the Customer. In case of such defects, warranty claims against Ferratec GmbH shall only exist under other circumstances and according to these Terms and Conditions of Sale, Delivery and Payment if and insofar the legal assertion of the abovementioned claims against the manufacturer and supplier was unsuccessful or is futile, e.g. because of insolvency. The period of limitation for warranty claims of the Customer against Ferratec GmbH shall be suspended for the duration of the litigation.
- j) The warranty ceases to apply if the Customer makes modifications or has third parties make modifications to the delivery item without Ferratec GmbH's consent, and the remedy of defects is thereby rendered impossible or unreasonable. In any case, the Customer has to bear the additional costs for the remedy of defects caused by such modification.

### **13. Protection of Intellectual and Industrial Property Rights**

- a) In accordance with this Section 13, Ferratec GmbH guarantees that the delivery item is free of third party industrial property rights or copyrights, unless a case pursuant to Section 4 of these Terms and Conditions of Sale, Delivery and Payment exists. Each contracting party shall

inform the other parties in writing without delay if claims based on infringement of such rights are being asserted against it.

- b) In case the delivery item infringes a third party's industrial property right or copyright, Ferratec GmbH, at its own discretion and at its own expense, will either modify or exchange the delivery item to the effect that third party rights are no longer infringed, but the delivery item will still meet the contractually agreed functions, or will procure the rights of use for the Customer by concluding a license agreement. If Ferratec GmbH does not achieve this within a reasonable period of time, the Customer shall have the right to rescind the contract or to request a reasonable reduction of the purchase price. Any compensation claims of the Customer are subject to the restrictions as set forth in Section 14 of these General Terms and Conditions of Sale, Delivery and Payment.
- c) In case of infringement of rights by products from other manufacturers supplied by it, Ferratec GmbH at its own discretion will assert its claims against the manufacturers and suppliers for the account of the Customer, or assign such claims to the Customer. Claims against Ferratec GmbH shall in these cases only be admitted in accordance with this Section 13 if and insofar the legal assertion of the abovementioned claims against the manufacturer and supplier was unsuccessful or is futile, e.g. because of insolvency.

## **14. Compensation for Damages**

- a) Ferratec GmbH's liability for damages, regardless of the legal grounds but in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, infringement of duties during contract negotiations and tort, insofar as they are subject to fault, shall be limited in accordance with this Section 14.
- b) Ferratec GmbH shall not be liable in cases of simple negligence of its organs, legal representatives, employees or other agents; this does not apply to the violation of duties essential to performance of the contract. Considered essential to the contract are the obligations for prompt delivery of the delivery object, free from defects which would significantly limit its functionality and usability, as well as duties of consultation, protection and care which shall enable the Customer to use the delivery item as contractually agreed, or whose purpose it is to protect the lives and health of the Customer's personnel or to protect its property from material damage.
- c) In case of liability for simple negligence, Ferratec GmbH's obligation to pay compensation for property damage and further financial losses resulting therefrom is limited to an amount of 3 million Euros per case of damage; this also applies in case of violation of duties essential to performance of the contract.
- d) The aforementioned exclusions and limitations of liability shall also apply to the same extent in favour of the organs, legal representatives, employees and other agents of Ferratec GmbH.
- e) Insofar as Ferratec GmbH provides technical information or acts as an adviser and this information or advice is not part of its contractually agreed scope of performance, it shall be provided free of charge and with the exclusion of any liability.
- f) The restrictions of this Section 14 do not apply to Ferratec GmbH's liability for intent, guaranteed characteristics, or damage to life, body or health under the German Product Liability Act.

## **15. Place of performance, Place of Jurisdiction and Governing Law**

- a) All contracts for delivery and services entered into by Ferratec GmbH are governed by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG).
- b) Place of performance for all claims resulting from the contract shall be Hoesbach.
- c) Aschaffenburg shall be the exclusive place of jurisdiction for all disputes arising from and in connection with the contracts entered into with Ferratec GmbH, insofar as the Customer is a merchant or does not have a place of general jurisdiction in Germany.

## **16. Final Provisions, Miscellaneous**

If the contract or these General Terms and Conditions of Sale, Delivery and Payment are

found to contain gaps, these gaps shall be filled with those legally valid regulations which the parties would have agreed upon with respect to the commercial aims of the contract and the purpose of the General Terms and Conditions of Sale, Delivery and Payment, had they been aware of the gap from the outset.

Note: the Customer acknowledges that Ferratec GmbH is allowed to store data from the contractual relationship in accordance with Sec. 28 Federal Data Protection Act for the purpose of data processing, and reserves the right to transfer the data to third parties (e.g. insurance companies) to the extent necessary for the performance of the contract