

# FAM Minerals & Mining GmbH

## General Conditions of Purchase

### A. Applicability, Conclusion of a Contract

1. For all contracts between FAM Minerals & Mining GmbH or a company affiliated with it in the sense of §§ 15 ff. AktG (German Stock Corporation Act) (hereinafter referred to as "**we**" or "**us**") on the one hand, and suppliers, vendors, contractors or other contractual partners who provide services for us (hereinafter referred to as "**supplier**") on the other hand - regardless of whether the contracts are purchase contracts, contracts for work, contracts for work and materials, service contracts or other contracts - are subject to these Terms and Conditions of Purchase. The Terms and Conditions of Purchase are also applicable to the declarations of intention made with regard to the conclusion of contracts between us and the supplier.

2. Opposing general terms and conditions of the supplier are not valid, even when not being contradicted in a single case.

3. Offers of the supplier are to be submitted to us free of charge, but with binding content. If our order corresponds to the previously submitted offer, the supply contract is concluded upon receipt of our order, unless otherwise provided for in the order. If we deviate from an offer of the supplier or if no offer is submitted, we shall be bound to our order for a maximum of two weeks from the date of the order, unless expressly stated otherwise in our order. If the supplier confirms our order after two weeks have elapsed, the contract shall only come into effect through our subsequent order confirmation. If the customer signs our order within two weeks of the order date or within the acceptance period otherwise defined in the order, a contract is concluded with this signature. Any subsequent order confirmations by the customer do not lead to a change in the contract already concluded.

4. Drawings, models, patterns and other documents prepared according to our instructions and being provided to the supplier must not be used other than for the preparation of the quotation and/or the execution of the contract and shall not be passed on to third parties and remain our property. They are to be returned to us after completion immediately forwarded and without request.

5. If the supplier recognises that our technical specifications are faulty, incomplete, unclear or not feasible, he must inform us of this and the recognisable consequences in writing without delay and before carrying out further services. The supplier shall await our instructions and, at our request, shall conduct constructive discussions with us regarding a correction of the technical specification.

6. All contracts concluded between us and the supplier (order and acceptance), including any amendments and additions thereto, must be in writing. Delivery call-offs can also be made by electronic data transmission.

### B. Prices, Payments, Passing of Property

1. Agreed prices are fixed prices, being valid until the settlement of the order will be terminated. Additional increases, no matter for which reason, are excluded. Especially surcharges for import duty, duties and other charges are excluded.

2. The agreed prices are free location of use, including incidentals, packing and freight expenses.

3. Unless otherwise specified or agreed, invoices have to be sent by e-mail exclusively to accounting.1000@fam.de. Invoices to other e-mail addresses will not be recorded or accepted. Only upon our request in individual cases are invoices to be sent by post in the original. The invoice address is as follows: "FAM Minerals & Mining GmbH, KFF-Finanzbuchhaltung, PF 3540, 39010 Magdeburg". We are entitled to pay by means of cheque or giro cheque transfer respectively. In this very case the payment will be effected in time when the cheque has been mailed on the due date or when the transfer has been received on the due date by our bank/ our giro centre.

4. Payments will have to be made either within 14 days on deduction of 3 % discount or within 30 days without deduction. The prescribed periods will start on receipt of invoice, however not before the date of inspection of goods received and, as far as documentations and test certificates being part of the delivery scope, not before the contractual delivery. Delayed payments based on non-regular delivery papers or incomplete statements on invoices entitle us to appropriate deductions. Expirations due to premature delivery of goods depend upon the agreed terms.

5. We are entitled to balance and to charge claims to which we are entitled against the supplier's claims. Provisions for a charge have to be considered as per the moment of origin and not per the expiration of claims. It is indifferent in case of charge whether cash payment, payment by means of bill/ cheque or other services have been arranged.

6. Payments shall be made subject to our verification of the factual and arithmetical accuracy of the invoice.

7. Supplier's non-contractual accomplishment of liabilities and/or any circumstances coming to our knowledge after the date of our order which are adapted to depreciate the supplier's credit standing or the ability for a

regular and complete contract fulfilment by the supplier entitle us to retain further due payments up to twice the value of the removal costs unless the supplier provides security in a corresponding amount.

8. In case of down payment, the ordered goods pass into our possession forthwith, even in case they will not yet have been delivered. Supplier will deposit the items free of charge and has to insure them against fire and other perils until delivery. Nevertheless, the supplier remains obliged to perform until delivery or acceptance, even if the goods are damaged or perish through no fault of the supplier.

9. The transfer of ownership of the goods or the delivery item to us must take place without reservation. If, however, we accept an offer of transfer of title from the supplier in an individual case, which is conditional upon payment of the purchase price, the supplier's reservation of title shall expire at the latest upon payment of the price for the delivered goods. In the ordinary course of business, we shall remain entitled to resell the goods in advance of payment of the agreed price and to assign the resulting claim.

10. Any processing, mixture or combining (further processing) of provided goods by the supplier is carried out for us. The same shall apply if the goods supplied are further processed by us, so that we shall acquire ownership of the goods supplied at the latest upon further processing in accordance with the statutory provisions.

11. The supplier is not entitled to cede his claims to us or to withdraw these claims by a third party without our preceding written consent which may not be refused inequitably. In case an extended reservation of title in favour of a pre-supplier will be at issue the consent should be considered as conferred.

### C. Deviations, Notice of Defect

1. Excess and short deliveries are not permitted, nor are deviations in dimensions, weights and other contractually agreed specifications of the goods to be manufactured or delivered.

2. We must notify the supplier immediately in writing of any defects in the delivery as soon as they are discovered in the normal course of business.

### D. Packaging

The supplier shall package the goods properly, taking into account our shipping and packaging instructions, in such a way that they are adequately protected and secured against damage and loss during transport. Goods at risk of corrosion must have temporary corrosion protection for at least 24 months. These regulations shall also apply if delivery "ex works" has been agreed.

### E. Delivery and Acceptance Deadlines

1. Arranged dates and periods are binding. Deliveries in advance and/or partial deliveries will require our explicit written approval. The supplier shall coordinate deliveries in a timely manner in advance with our purchaser responsible for the respective order and obtain his confirmation. We are entitled to refuse deliveries which are made without his confirmation. The supplier shall bear the costs associated with such rejection.

2. The purchase of goods at our works is decisive for the compliance with a set date of delivery. In case 'free buyer's address' has not been arranged, the supplier has to provide the goods in time under consideration of the usual time required for loading and dispatch.

3. In case the dates cannot be observed by the supplier due to any acceptable reason, we are entitled - after setting an appropriate additional respite and notwithstanding any extended legal claim - to procure replacements by a third party and/or to claim damages due to default in addition to or instead of performance. Any additional costs due to delayed delivery or services have to be replaced by the supplier. The choice of one of these rights to which we are entitled shall not constitute a waiver of the assertion of further rights.

4. Notwithstanding our rights under clause 3 and any other agreements which may have been made, in the event of delays in delivery we shall be entitled, following a prior written reminder to the supplier, to demand a contractual penalty of 0.5% of the order value of the goods or services with which the supplier is in default for each day of the delay in delivery, up to a maximum of 5.0%, unless the supplier can prove to us that we have suffered less damage.

5. Acceptance of a delayed delivery or service does not constitute the waiving of damage claims.

6. In case the supplier might foresee difficulties regarding production or material procurement or in case of circumstances which cannot be influenced and which might prevent the supplier from a delivery in time and required quality, the supplier has to inform us immediately and continually.

7. In case of force majeure, which include all circumstances which are not influenced or cannot be influenced by us, and operational breakdown

whatever - as far as they have not been intentionally or recklessly caused by us - as well as other unforeseen incidents making the acceptance even more difficult or impossible, we are entitled to adequately defer the dates and periods of acceptance without the supplier having any claims of damage or us having deferred quantities being charged to our account.

#### **F. Quality, Prevention of Accidents, other Provisions**

1. The supplier is obliged to perform the commissioned supplies and services according to the arranged specifications as well as under consideration of the latest state of technology. The supplier assures that the deliveries and services are suitable for the application and purpose communicated to him.

2. Insofar as the Supplier is aware or it is clear from documents provided to him in advance that the goods and services to be provided by him are intended for a specific end customer, the Supplier shall itself familiarise itself fully with the local circumstances, regulations and conditions of use at the end customer's premises. He shall provide his deliveries and services in such a way that they can be used at the end customer's premises in accordance with the contract.

3. Regarding processing orders we shall remunerate the processing expenses only for those parts being delivered in useful state according to the arranged specifications and under consideration of the latest state of technology. The supplier may only use material for the execution of the order which has been provided by us and which has to be again reviewed on the supplier's own responsibility. In case the supplier manufactures material different from the material having been provided by us, he will be held responsible for any thus occurring damage. The material costs for defective parts due to processing sub-standard goods having been caused by the supplier, shall be borne by the supplier.

4. The ordered parts, instruments, plants, machines etc. to be delivered including fittings have to comply with the legal provisions concerning technical work materials (Act dealing with Machine Protection), the appropriate provisions concerning the prevention of accidents, the employment protection regulations, the generally accepted regulations concerning labour safety and medical care and - if necessary - with further relevant provisions. Any necessary safety devices or protective equipment are included in the delivery. The supplier must use environmentally compatible production processes within the framework of the economic and technical possibilities for his deliveries and services as well as for the deliveries and services of his subcontractors.

5. The supplier declares and warrants that in executing the order he will only use permanently employed personnel in accordance with the obligations, laws and regulations on safety, welfare and assistance and all applicable regulations. The supplier is obliged to immediately provide us with all documents proving the legality of the personnel employed by him. The supplier guarantees and indemnifies us and our legal successors against any liability, including claims for damages.

6. If quality problems occur which are caused by the deliveries and services of subcontractors, the supplier is obliged to arrange for an audit of the subcontractor concerned and to provide us with a copy of the audit report. Additional requirements for the quality of the delivered goods within the scope of a quality assurance agreement remain unaffected. We reserve the right to demand such additional requirements in the order.

7. Any assignment of subcontractors requires our prior written consent. In the event of a breach, we may terminate the contract without notice, without the supplier being entitled to claims of any kind against us.

#### **G. Spare Parts**

1. The supplier is obliged to keep spare parts for the goods delivered to us in stock for a period of at least ten years after delivery.

2. If the supplier intends to discontinue the production of spare parts for the goods delivered to us, he must inform us immediately after the decision is made. This decision must be made at least 12 months before production is stopped.

#### **H. Quality Inspections**

1. We may check the quality and the production progress of the services owed at the supplier's premises at any time during regular working hours. For this purpose, the supplier shall provide us free of charge with all equipment necessary for carrying out inspections.

3. The supplier shall grant us, our representatives, our customers and their representatives free access to the production facilities during regular working hours for the deliveries and services owed by him.

3. Quality inspections carried out by us or our representatives do not constitute acceptance and do not release the supplier from his contractual obligations, in particular from his warranty obligations. The supplier will respond to our notifications of defects within a maximum of 3 working days.

4. Intermediate and final inspections are carried out at the supplier's premises on the basis of the agreed inspection and test plans (ITP). If no

ITP has been agreed for selected products, the supplier shall carry out final inspections after manufacture of the contractual items and notify us in writing 14 calendar days in advance. If we waive participation in the inspection, the supplier shall carry out the inspections himself. He will immediately send us the contractually agreed documents and evidence for inspection. He will prepare the contractual items for dispatch only after our release, which does not yet constitute acceptance in the legal sense.

5. Should defects in the contractual object be detected during the intermediate or final inspections, the supplier shall remedy these immediately at his own expense. Costs for renewed inspections shall be borne by the supplier. Further agreements of the contract, such as the delivery date, remain unaffected.

#### **I. Changes to the Scope of the Contract**

1. We may at any time demand changes to the specifications, requirements, sketches and installation drawings for the deliveries and services to be provided by the supplier. The Supplier shall inform us immediately in writing of any additional costs incurred as a result of such changes. He will implement the changes only after our written acceptance of the additional costs.

2. The Supplier shall notify us immediately in writing of any changes or additions to the scope of the contract which become necessary during execution, stating the additional costs incurred as a result. He will only implement the changes or additions after our written acceptance of the additional costs.

3. Changes or additions to the scope of the contract or delivery which become necessary for reasons for which the supplier is responsible must be implemented by the supplier at his own expense after our written approval.

#### **J. Warranty**

1. The supplier is held responsible for the duration of the warranty period for defects of goods or service - no matter whether they have been noticed immediately or later - in that way, that we for our part shall be entitled notwithstanding to our remaining rights to claim at our option replacements free of charge, removal of defects free of charge - including removal or replacement costs - or an appropriate price reduction respectively. In urgent cases or after expiry of a set deadline we are authorized to remove defects or having removed those defects by a third party. Thus occurring costs shall be borne by the supplier whereby we are entitled to demand a reasonable advance payment from the supplier for the costs of removal.

2. The warranty period for deficiencies in quality shall be five years for any performance relating to the construction of a building or any delivery of products which are normally used for the construction of a building causing the building's defectiveness. In any other cases of delivery and/or performance deficiencies the warranty period shall be two years after delivery (in the case of purchase contracts) or after acceptance (in the case of contracts for work and services), but at least - if the goods delivered by the supplier are used for a plant to be operated by an end customer - one year after the plant is commissioned by the end customer.

3. If negotiations are held regarding the warranty claim or the circumstances substantiating the claim, the suspension shall continue until one or the other contracting party refuses to continue the negotiations in writing. The statute of limitations shall commence at the earliest three months after the end of the suspension.

4. The seller/supplier guarantees for any repair works or substitute deliveries to the same extent as for the original delivery/performance. The warranty period for the substitute delivery or the delivery of the repaired item commences upon customer acceptance and/or delivery.

#### **K. Liability, Infringement of third Party Rights, Insurance**

1. Insofar as no stricter liability on the part of the supplier is provided for in these Terms and Conditions of Purchase or otherwise - for example in the case of a strict liability for guarantees or warranted characteristics, liability for fraudulent concealment and liability under the Product Liability Act - the supplier shall be liable for damages caused by him or his vicarious agents in accordance with the statutory provisions for intent or negligence. If the supplier is responsible for damages under these provisions, he must indemnify us against third-party claims in this respect; in particular, the supplier must reimburse us for expenses arising from or in connection with third-party claims, including recall measures carried out by us. We will inform the supplier about the content and scope of recall measures - as far as possible and reasonable - and give him the opportunity to comment. Further legal claims remain unaffected.

2. The supplier warrants that third-party rights will not be infringed by delivery, using and distribution of the purchased goods as well as by utilisation of an eventually realised service from his part. Supplier thus will exempt us without any restriction from eventual third-parties' claims.

3. The supplier undertakes to take out or maintain liability insurance to a reasonable extent, but at least in the amount of EUR 5.0 million or - if this

amount is exceeded - in the amount of the order value. We shall be entitled to have evidence of such insurance presented to us.

#### **L. Confidentiality**

1. The supplier undertakes to treat all commercial and technical details which are not public knowledge and which become known to him through the business relationship as strictly confidential, to protect them against disclosure by third parties by taking appropriate measures and to use them only for the fulfilment of the contract existing with us.
2. All data arising from the use of the items which the supplier has delivered to us (hereinafter referred to as "machine data") belong exclusively to us, are to be treated confidentially by the supplier and may only be collected, used, stored or processed by the supplier to the extent that this is indispensable for the provision of services to us. The supplier shall inform us unsolicited about all machine data that he collects, uses, stores or processes and shall grant us comprehensive access to this machine data at any time. After complete performance of the services, the supplier shall hand over to us all machine data which are not on the items delivered to us or on any other equipment used by us and then delete them on his own equipment. Unless expressly agreed otherwise, the items delivered to us may not have data loggers or similar devices with which the supplier has access to machine data or collects, uses, stores or processes such data for his own purposes.
3. Confidential product information such as samples, drawings, models, dies, cutting, punching or other tools and similar information, which are either communicated by us or developed by the supplier for us in connection with our order, are our sole property and may not be handed over or otherwise made accessible by the supplier to unauthorised third parties. The reproduction of such objects or technical drawings or data thereof is only permitted within the scope of the operational requirements for the fulfilment of our order.
4. Data carriers, samples, templates, drawings, etc. provided must be returned to us without request after completion of our order; a right of retention, for whatever legal reason, is excluded.
5. Sub-suppliers have to be held responsible accordingly.

#### **M. Termination of a Contract**

1. If, due to force majeure (see E.7 of these Terms and Conditions of Purchase), the supplier's deliveries and services can no longer be used for us or our end customer, either permanently or temporarily, we are entitled to terminate the entire contract or parts of the contract or to demand the execution at a subsequent time without the supplier thus having any claims against us.
2. In the case of contracts for work and/or contracts for work and materials, we are entitled to terminate the contract in whole or in part. In these cases we are only obliged to pay the agreed remuneration to which the supplier is entitled; however, the supplier must deduct any expenses saved as a result of the cancellation of the contract or which he acquires or maliciously omits to acquire by using his labour elsewhere. It is assumed that the supplier is thereafter entitled to 1% of the agreed remuneration for the part of the work not yet performed; however, the parties are permitted to prove a higher or lower margin.
3. In the event of withdrawal in accordance with items 1. or 2. above, partially completed workpieces or partial deliveries must be delivered to us on request.

#### **N. Miscellaneous**

1. The supplier shall only be entitled to a right of set-off or retention on the basis of counterclaims which have become res judicata or are undisputed.
2. Place of performance concerning the supplier's liabilities shall be the place of destination.
3. Legal action has to be taken at the court of Magdeburg, as the case may be, being competent for our registered office in case of any dispute arising from the contract, provided the supplier being trader, legal person or separate estate under public law. We are also entitled to take legal action at the supplier's place of business or branch.
4. The law of the Federal Republic of Germany is applicable. Application of standard United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
5. Should individual provisions of these Terms and Conditions of Purchase be or become invalid, this shall not affect the legal validity of the remaining provisions.