

Standard terms and conditions of purchase of FAIR GmbH

1. General provisions:

These standard terms and conditions of purchase shall apply to all orders for goods and services placed by FAIR GmbH ('FAIR') unless agreed otherwise in writing between FAIR and the supplier.

By provision of a quotation, or by confirmation, acceptance or execution of an order, the supplier shall be deemed to have accepted these standard terms and conditions of purchase to the extent that FAIR communicated these to the supplier in connection with an invitation to tender, request for a quotation or on placing an order or otherwise made them generally known such that the supplier could reasonably anticipate that they are to apply.

Standard terms and conditions of the supplier and terms and conditions that deviate from the order letter issued by FAIR or that deviate from these standard terms and conditions of purchase shall apply only and in such case only to the extent that FAIR has expressly approved these in writing. The same shall apply where in its quotation or order confirmation the supplier refers to its own standard terms and conditions. If, for whatever reason, individual provisions of these standard terms and conditions of purchase cannot be applied, this shall not affect the application of the remaining provisions. All documents including invoices shall mention the order number, FAIR's reference number and date of FAIR's letter.

2. Quotation, order and confirmation of order:

Quotations shall be provided in duplicate and free of charge. In its quotation, as regards quantity, characteristics and execution the supplier shall adhere to the specification stated in the request or invitation to tender and in the event of any variation from such it shall refer expressly to that fact. The supplier shall be bound by its quotation for a period of three months.

No consideration will be given to quotations based on agreements in restraint of competition within the meaning of section 298 of the German Criminal Code or involving unlawful restraints on competition within the meaning of the Law against restrictions of competition (GWB) and which are based, in particular, on agreements with others concerning the submission or non-submission of quotations, prices demanded, the payment of compensation (profit-sharing or other benefits) for non-participation or the fixing of recommended prices.

For an order to be binding, it must be made in writing. Oral agreements shall not be effective unless FAIR confirms these in writing. Orders shall be confirmed in writing by the supplier without delay. FAIR reserves the right to withdraw its order if confirmation is not received within a reasonable period.

3. Prices:

All prices agreed shall constitute fixed prices exclusive of VAT and shall include free packaging and freight to the point of use at FAIR. Where an alternative agreement is reached, the supplier shall cover the costs of packaging and freight and itemise such expenditure separately in its accounts submitted to FAIR.

4. Execution of the contract and compliance with rules and regulations:

The supplier undertakes to observe the relevant statutory and administrative rules and regulations in its performance of the contract. The goods and services supplied shall satisfy the relevant safety, worker protection and accident prevention rules and comply with the relevant DIN, VDE and other standards. Protective devices required pursuant to provisions of that kind shall be included in the price stated by the supplier in its quotation. If the supplier has concerns with regard to the specification requested by FAIR, it shall inform FAIR of this fact in writing without delay.

All documentation necessary for approval, operation, servicing and repair (test protocols and reports, drawings, plans, operating instructions, etc.) shall be included by the supplier at no extra charge and, where appropriate, supplied in reproducible form.

5. Delivery period and procurement risk:

The delivery period shall begin on the date on which FAIR's order letter is received by the supplier. Following the expiry of the delivery period, the supplier shall be regarded as in default without any need for notification thereof. Where the delivery period is exceeded, for each complete week of delay, the supplier shall be obliged to pay liquidated damages amounting to 0.5% of the order value to a maximum of 5% of the order value in total. This shall be without prejudice to the right to claim further damages. If delays are anticipated, the supplier shall immediately inform FAIR thereof in writing stating the reasons for the delay and its likely duration.

The supplier assumes full liability for the quality of the goods/services and any ancillary goods/services that are required, even where the supplier is not at fault for defects (full assumption of the procurement risk).

6. Right to obtain information and to carry out testing:

FAIR and persons authorised by FAIR shall be entitled to satisfy themselves at the supplier's premises and during working hours of the execution of the order in accordance with the contract, to participate in the supplier's tests and to carry out their own tests. The costs of tests required by FAIR shall be borne by FAIR to the extent that FAIR provides the staff or materials for the carrying out of the tests. The costs of repeat tests carried out by FAIR as a result of defects identified in earlier tests shall be borne in full by the supplier.

In the case of subcontracting, the supplier undertakes to ensure that each subcontractor grants to FAIR the right to obtain information and carry out testing at the premises of the subcontractor to the extent stated above. Testing shall not relieve the supplier of any liability or of the warranty given in relation to defects.

7. Contractual amendments and assignment of rights:

After placing its order, FAIR shall be entitled to amend the specification of the goods and services ordered provided that this remains within the supplier's technical capacity. Technical amendments and any consequential changes to prices, delivery periods or other conditions shall be made in writing as specified in section 2 of these standard terms and conditions of purchase. The supplier may not assign any of its claims against FAIR.

8. Freight and customs:

Each consignment shall be accompanied by a delivery note (in duplicate). In the case of consignments from foreign customs territories, the supplier shall contact FAIR in good time in order to resolve customs and import formalities.

9. Acceptance:

(a) Unless agreed otherwise, as a rule, all goods ordered shall be delivered to the warehouse of the GSI Helmholtzzentrum für Schwerionenforschung GmbH, Planckstrasse 1, D-64291 Darmstadt, Germany.

Unless agreed otherwise, goods will only be received at the following times:

Monday to Thursday	between 8.00 and 16.00 hrs	and
Friday	between 8.00 and 13.00 hrs.	

(b) If the goods and services have been supplied as specified in the contract or all defects identified have been rectified, such goods and services shall be accepted. Where trial operations have been agreed, following a trial run free of any errors, a joint report will be compiled in acceptance of the relevant item.

Advance payments or payments on account towards the purchase and/or delivery price do not indicate technical acceptance, nor do they indicate that the goods are free of defects.

10. Ownership rights:

FAIR shall acquire complete title to the property which is the subject-matter of the supply following the handover and acceptance of such; the same shall apply to the accompanying documents provided by the supplier (see the second paragraph of section 4). In transferring the property, the supplier warrants that it possesses all rights over such and that the property is not encumbered by third party rights.

Materials provided by FAIR to the supplier shall remain the property of FAIR. These shall be marked as such and must be stored, labelled and accounted for separately. If materials provided by FAIR are processed, transformed, combined or mixed with other items, FAIR shall acquire exclusive title to the new item. The supplier shall store this free of charge on behalf of FAIR. The change of property does not replace or substitute acceptance by FAIR.

Title and copyright in any FAIR documents provided to the supplier shall remain with FAIR. On demand, all documents together with all copies thereof shall be returned without delay. FAIR documents may be used only for such purposes as are contractually agreed. In the event of any infringement, the supplier shall be liable for all loss and damage arising.

11. Accounts and payments:

Accounts shall be submitted as a single copy. VAT must be included as a separate item, unless the supply originates in another EU country.

The period within which payment must be made and within which discounts for prompt payment apply shall begin after receipt of the account with following acceptance of the goods or services supplied as well as transfer of all documentation pertinent to the scope of the delivery. Payment shall be deemed to have been made when the paying bank receives instructions from FAIR to make such payment. Payment shall not be regarded as confirmation that the supplier has satisfied its contractual obligations. For FAIR to be regarded as in default, written notification to that effect shall be necessary.

12. Warranty for defects:

The supplier shall be liable in accordance with the statutory provisions for defects in title or of quality. It shall ensure diligent and proper performance of the contract, in particular, compliance with the specifications and other requirements established by FAIR having regard to the scientific and technological state of the art and shall also ensure the quality and fitness for purpose both of the goods and services supplied as regards the materials, construction and finish thereof and of the accompanying documents (drawings, plans, etc.). The specifications established shall be deemed to constitute contractually agreed and guaranteed features of the goods or services supplied.

The provisions of the German Civil Code concerning a supplier's refusal to perform and delays and defects in a supplier's performance shall apply also to purchase contracts and contracts for the manufacture or production of specific goods.

Where defects require remedy, costs to be borne by the supplier shall include expenditure on packaging, freight and delivery, the labour costs involved in installation and disassembly, travel expenses and the costs of remedying the defects at the premises of FAIR.

The warranty period in relation to defects shall be 24 months in all cases. Where no written confirmation of acceptance is issued, the warranty period shall begin to run two weeks after receipt of the goods or services by FAIR. The application of section 377 et seq. of the German Commercial Code shall be excluded.

In relation to spare parts supplied and remedial work, the supplier shall be liable to the same extent as it is in relation to the original supply and the warranty period shall only begin to run after defects identified have been remedied. In relation to parts supplied which cannot remain in operation on account of defects the warranty period shall be extended by the period during which operations are suspended.

13. Intellectual property rights:

The supplier shall ensure that in the execution of the contract and in the provision and subsequent use of the goods and services supplied intellectual property rights of third parties are not infringed. It shall indemnify FAIR against third party claims for the infringement of intellectual property rights.

14. Publicity materials:

Suppliers may refer in publicity materials to their commercial relationship with FAIR only with its express consent.

15. Termination and cancellation:

Without prejudice to other termination or cancellation rights, FAIR shall be entitled to terminate or cancel the contract where the supplier has engaged in conduct of the kind specified in sections 333 and 334 of the German Criminal Code (giving of bribes). The following shall also constitute grounds for termination or cancellation:

- Acts outside the scope of proper commercial conduct
- Failure to comply with requirements to pay taxes and dues or social security contributions
- The deliberate making of incorrect statements with regard to reliability, expertise and capacity

In addition, the supplier will be liable to FAIR in damages for all loss and damage caused it by culpable conduct.

Furthermore, FAIR shall be entitled to cancel or terminate the contract if insolvency or judicial administration proceedings have been opened in relation to the supplier or it has ceased not merely temporarily to make payments.

16. Safety regulations and internal rules:

Where goods and services are supplied on site and at the premises of FAIR, the safety regulations and internal rules of FAIR must be observed and, in such a case, these shall constitute an integral element of the contract.

17. Place of performance and jurisdiction:

The place of performance for the supplier shall be the delivery address stated in the order. Disputes arising shall be referred to the jurisdiction of the courts in Darmstadt.