



General Terms and Conditions of FAN Separator GmbH

1 - Scope

- 1.1. All agreements and offers between us and our contractual partners (purchasers and suppliers) are based on these General Terms and Conditions (hereinafter referred to as GTCs). They shall be accepted when placing an order or when the purchaser accepts our deliveries or services or through order confirmation or delivery or performance of services by us. Changes or the exclusion of these GTCs as well as the purchaser's or supplier's deviating terms shall only become the content of the contract if we explicitly consent to them.
- 1.2. These GTCs shall also apply to all future deliveries, services and offers, even if they are not again separately agreed.
- 1.3. These GTCs shall apply exclusively to purchasers and suppliers which are entrepreneurs within the meaning of section 14 German Civil Code [*Bürgerliches Gesetzbuch* (BGB)], a legal person under public law and a special fund under public law (section 310 BGB).

2 - Offer

- 2.1. Our offers are subject to change, unless provided otherwise in the offer.
- 2.2. The purchase order signed by the purchaser is a binding offer. We are entitled to accept or confirm this offer within 14 days or carry out the service within this period.
- 2.3. Drawings, illustrations, descriptions, plans, prospectuses or similar documents associated with or underlying our offers shall be non-binding information, which shall not become the content of the contract, unless it is explicitly agreed in writing that corresponding documents or that is to say a particular content of these documents shall become the content of the contract.

3 - Scope of our deliveries and services, contractual purpose, purchaser's obligation to cooperate

- 3.1. The scope of our deliveries and services shall be as indicated in our order confirmation and in the absence of such as indicated in the offer underlying the purchase order. Deliveries and services that are not explicitly specified or listed are not part of our scope of deliveries and services. The scope of deliveries and services in particular does not include: installation and construction work, water and electrical installation work and forging work, unless they have been specifically agreed.
- 3.2. We reserve the right to make technical alterations concerning the form, design and construction of our deliveries and services, unless this does not jeopardise the contractual purpose and are reasonable for the purchaser. Requests for changes by the purchaser shall always require our confirmation in writing in order to become binding.
- 3.3. A specific contractual purpose or a specific fitness for use of the subject matter of the contract shall only become the content of the contract if the purpose or the fitness for use is separately agreed.
- 3.4. The purchaser is obliged to cooperate. It must provide necessary auxiliary personnel at its own expense in the event of installation work and make available or maintain the local conditions in such a form that an installation and possibly an acceptance can be carried out as far as possible without any delay.

4 - Delivery time and period

- 4.1. Delivery times or delivery periods indicated by us are non-binding, unless a specific delivery time or delivery period is explicitly agreed as binding by us. The start of the delivery time or period shall be subject to the clarification of all technical issues and the timely and proper fulfilment of purchaser's obligations. The period shall be extended appropriately or the deadline shall be postponed by a reasonable period if the foregoing conditions are not all fulfilled in good time. The delivery time or the delivery period shall be observed if the ordered goods have left our warehouse, if the goods are shipped ex works, our works or the manufacturer's works, or the readiness for shipment has been notified.
- 4.2. If we are prevented from carrying out our deliveries and services in good time through mobilisation, war, riots, strike, lockout, breakdowns, fire, natural disasters, transport obstructions, changes in statutory provisions, official measures or orders or the occurrence of other unforeseeable occurrences which lie outside of our sphere of influence and which we were not able to avert despite all reasonable diligence in the circumstances of a particular case, the delivery time and delivery period shall be extended in a reasonable measure. This shall also apply if such circumstances occur at our suppliers' premises. We will inform the purchaser of such obstructions without delay subject to our receipt of the goods correctly and punctually from our suppliers.
- 4.3. If the purchaser falls into default of acceptance or if it culpably breaches other obligations to cooperate, we are entitled to claim recovery of the damage thus incurred by us, including any additional expenditure (especially storage costs). We reserve the right to assert further claims. Moreover, notwithstanding no. 5.3, in this case, the risk of an accidental loss or an accidental deterioration of the delivery shall pass to the purchaser at the time in which the purchase has fallen into default of acceptance.
- 4.4. If we default in a delivery or the performance of a service or it becomes impossible for us to carry out a delivery or perform a service for whatever reason, our liability for damages shall be limited in accordance with no. 9 of these GTCs.

5 - Delivery, collection by the purchaser, passage of risk, return, acceptance

- 5.1. Unless otherwise agreed, the delivery shall be made ex works (EXW) in accordance with Incoterms 2010.
- 5.2. If collection by the purchaser is agreed, the purchaser is obliged to collect the purchase order within 7 days after notification of readiness to ship the goods. After the end of this period, we are entitled to ship the delivery at the purchaser's expense.
- 5.3. The risk of the accidental loss or the accidental deterioration of the delivery shall pass to the purchaser upon the dispatch to the carrier, freight forwarder or person otherwise designated to carry out the shipment or in the case of no. 5.2 at the time of the notification of readiness to ship the goods.
- 5.4. Returns and return deliveries will only be accepted by us if we have consented to them beforehand, which are not obliged to do. A return and return delivery shall in any case be on condition that items to be returned are as new and in original packaging. If we consent to a return or return delivery, the purchaser must arrange for this at its own expense and risk. If the foregoing conditions are fulfilled, we shall provide a credit note in the amount of the value of the goods minus a flat-rate return and re-warehousing fee in the amount of 25% of the net value of the goods, but at least in the amount of €25 net per order for the returned items.
- 5.5. If an acceptance must take place, the delivery or service shall be considered as accepted if any installation owed by us is completed and we have requested the purchaser to accept the goods, by referring to the regulation in this no. 5.5, but it does not do this within 14 days, and the purchaser has omitted to carry out the acceptance within this period for a different reason than due to a defect notified to us, which makes it impossible for us to use or significantly impairs our use of the delivered goods. Subject to the foregoing condition, the delivery or service shall likewise be considered as accepted if 14 days have passed since the delivery of installation and the purchaser has started to use the delivered items.

6 - Prices, payment conditions

- 6.1. Unless specific prices are explicitly agreed otherwise, our prices shall be in accordance with our valid price lists on the date of the dispatch.
- 6.2. All stated prices are net prices, to which VAT in the current statutory amount in each case as well as packaging costs and any freight charges must be added.
- 6.3. For orders with an order value of less than € 100.00 (net value of the goods) moreover a minimum order surcharge in the amount of €25.00 (plus VAT) shall be charged.
- 6.4. For contracts with an agreed delivery time of more than 4 months, we reserve the right to increase the prices as a consequence of variation of cost incurred, in particular due to changes in collective labour agreements or materials costs. If the increase is more than 5% of the agreed price, the purchaser is entitled to cancel the contract (termination or rescission).
- 6.5. We are entitled only to carry out or provide still outstanding deliveries or services for payment in advance or by way of security if we become aware of circumstances after the conclusion of the contract, which are of a nature to significantly reduce the customer's creditworthiness and on account of which the customer's payment of our debts outstanding is put at risk. We supply new customers for payment in advance or for cash on delivery.
- 6.6. Unless indicated otherwise in our order confirmation or on our invoice, the prices shall be due for payment without deductions 8 days from the invoice date.
- 6.7. The purchaser may only set off counterclaims that are recognised by declaratory judgement, undisputed or acknowledged by us. The purchaser is only authorised to exercise a right of retention if its counterclaim is based on the same contractual relationship.

7 - Retention of Title

- 7.1. The items delivered by us shall remain our property until all existing claims against the purchaser have been fulfilled (goods subject to retention of title), even if individual items have been paid for. A pledging or assignment of the goods subject to retention of title by way of security is not permitted.
- 7.2. The purchaser already assigns to us, for the event of re-sale or rental of the goods subject to retention of title – as permissible in the course of ordinary business operations –, and until the payment of all accounts receivable, the future accounts receivable from its customers arising from the re-sale or rental as security, without special declarations being required at a later date; the assignment extends also to balance receivables arising from existing current account relationships upon the termination of such relationships between the purchaser and its customers. If the goods subject to retention of title are re-sold or rented together with other articles without an individual price being agreed for the goods subject to retention of title, the purchaser shall assign to us, with precedence over the remaining receivables, that part of the total price receivable or of the total rental that corresponds to the value of the goods subject to retention of title invoiced by us. Until revocation, the purchaser shall be authorized to collect the assigned receivables from the re-sale or rental; he shall however not be entitled to dispose of them in another way, e.g. by assignment.
- 7.3. At our request, the purchaser must announce the assignment to the customer and hand over to us the documents, e.g. invoices we require to assert our rights against the purchaser's customer and to provide the required information. All costs of collection and of any interventions shall be borne by the purchaser. If the purchaser receives bills of exchange on the basis of the authorization granted to it to collect the assigned receivables from re-sale, title to these papers shall pass with the vested right as security to us. The transfer of the bills shall be replaced by the agreement that the purchaser takes them into safekeeping for us and then hands them over without delay and endorsed to us. In the event that the countervalue of the receivables assigned to us in cheques is received by the purchaser or by a bank of the purchaser, the latter shall be obliged to immediately report their receipt and to transfer them. Title to the cheques shall pass with the vested right to us as soon as the purchaser receives them. The transfer of the papers shall be replaced by the agreement that the purchaser takes them into safekeeping for us and then hands them over without delay and endorsed to us.



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- 7.4. If the purchaser processes, converts or combines the goods subject to retention of title with other articles, the processing, conversion or combination shall be for us. This shall also apply if we participate in the processing, conversion or combination or carry out this for the purchaser. We shall become the direct owner of the object manufactured by processing, conversion or combination. Should this not be possible for legal reasons, we and the purchaser are agreed that we shall be the owner of the new object at every stage during processing, conversion or combination. The purchaser shall keep the new object for us with the due care and diligence of a prudent businessman. The object resulting from processing, conversion or combination shall be deemed as goods subject to retention of title. In the case of processing, conversion or combination with other objects not belonging to us, we shall be entitled to co-ownership of the new object in the amount of the proportion resulting from the ratio of the value of the processed, converted or combined goods subject to retention of title to the value of the new object. In the event of sale or rental of the new object, the purchaser hereby assigns to us its claim arising from sale or rental against its customer with all subsidiary rights as security, without special declarations being required at a later date. The assignment applies however only in the amount corresponding to the value as invoiced by us of the processed, converted or combined goods subject to retention of title. The share of the receivable assigned to us shall take precedence over the other receivable.
- 7.5. If the goods subject to retention of title are combined with real estate properties or moveable property by the purchaser – the same shall apply if we cooperate in the combination in accordance with the terms of the contract –, the purchaser also assigns its claim that it is entitled to as remuneration for the combination, including all accessory rights to us by way of assignment without special declarations being required. If the purchaser is the owner of the real estate property or is entitled to a claim for the rent from this real estate property for other legal reasons, it shall also assign this rent to us. Concerning the amount of the assigned receivable, no. 7.4 shall apply accordingly.
- 7.6. If the purchaser comes completely or partially into arrears with its payment obligation or with the cashing of due bills of exchange or cheques, if it is overindebted or has suspended payment, or if a petition for composition or insolvency proceedings has been filed, we shall be entitled to immediately take possession of all goods still subject to retention of title; also, it may immediately claim further rights arising from the retention of title; the same applies in the event of any other major deterioration in the economic situation of the purchaser. The demand for handover or repossession shall not be deemed as rescission of the contract. We shall be entitled to use the goods subject to retention of title with the due care and diligence of a prudent businessman and to make use of the proceeds therefrom to set off our outstanding claims.
- 7.7. If the value of the securities exceeds our claims against the purchaser arising from the current business relationship by more than 20% in total, we shall be obliged at the purchaser's request to release securities due to it at its discretion.
- 7.8. In the event of attachments or other interferences by third parties, the purchaser must notify us in writing without delay. If the third party is unable to reimburse us for the court and out-of-court third-party interference proceedings or an action for enforcement against such interferences, the purchaser shall be liable for the loss incurred by us.

8 - Warranty

- 8.1. The warranty period shall be one year from delivery or, where acceptance is required or agreed, from acceptance, unless a longer warranty period is agreed in a particular case.
- 8.2. Promptly after delivery to the purchaser or a third party appointed by it, the goods delivered shall be carefully inspected. They shall be deemed accepted, unless we are given notice within seven working days from delivery of the goods of obvious defects or of any other defect identified during a prompt and careful inspection, or otherwise within seven working days from discovery of the defect or the time when the defect was noticed by the purchaser during normal use of the delivered goods. At our request, the delivered goods complained of must be returned to us freight-paid. We will refund the costs of the cheapest dispatch route should the notice of defects be justified; this will not apply should the costs be increased due to the delivered goods being at a different location to the place where the goods are regularly used.
- 8.3. In the event of material defects relating to the delivered goods, we shall initially be obliged and entitled at our discretion to remedy the defects or deliver a replacement within a reasonable period of time. Where the remedy of defects or the replacement is unsuccessful, seriously and definitively refused by us, especially because of unreasonable costs, or unreasonable for us, the purchaser shall be entitled to the further statutory rights due to a material defect.
- 8.4. If a defect is based on our fault, the purchaser may demand payment of damages subject to the requirements specified in no. 9.
- 8.5. In the event of defects of components supplied by other manufacturers which we cannot remedy for licensing or factual reasons, we shall either assert our warranty claims against the manufacturers and suppliers for the account of the purchaser or, at our discretion, assign our claims to the purchaser. Warranty claims against us based on such defects shall be permissible subject to the other conditions and in accordance with these GTCs only where the enforcement of the above claims against the manufacturers and suppliers by legal action was unsuccessful or offers no prospect of success due, for instance, to insolvency. For the duration of the legal action, the statute of limitations for the particular warranty claims of the purchaser against us shall be suspended.
- 8.6. The warranty shall lapse if the purchaser makes changes to the delivered goods or has changes made by third parties without our consent, thus making the remedy of defects impossible or unreasonably difficult. At all events, the purchaser shall bear any additional costs of the remedy of defects incurred through the change.
- 8.7. Warranty claims shall be excluded:
- Regarding a deterioration of such parts which are subject to natural wear and tear, such as for example linings, screw-conveyors, rubber parts, unless the deterioration has a different cause than wear and tear;
 - If operating and maintenance instructions are not observed, or
 - If persons who are not authorised to do so by us carry out repairs and interferences with the item.
 - When using non-original FAN spare and replacement parts
- 8.8. A delivery of used items agreed with the purchaser in a particular case shall be done to the exclusion of any warranty.
- 8.9. It is expressly agreed that the purchaser, save as provided for in this Clause, shall have no claims on the vendor for compensation in respect of any kind of loss or consequential damage, or for loss of profit.

9 – Liability for damages for fault

- 9.1. Our liability for damages, for whatever legal reason, especially due to impossibility, delay, defective or incorrect delivery, breach of contract, infringement of duties during contractual negotiations and tort is, in so far as we are in fault in each case, shall be limited in accordance with this no. 9.
- 9.2. We shall not be liable for
- Cases of ordinary negligence by our executive bodies, legal representatives, salaried employees or other vicarious agents;
 - Cases of gross negligence by our non-managerial salaried employees or other vicarious agents, unless such cases concern a breach of material contractual obligations. Material contractual obligations include the obligation to make punctual, defect-free deliveries and installation obligations as well as obligations concerning consultancy services, protection and care designed to enable the purchaser to use the delivered goods in accordance with the contract or protect life or limb of the employees of the purchaser or third parties or to protect the purchaser's property from significant damage.
- 9.3. If we are liable for damages on the grounds of and in accordance with no. 9.2, this liability shall be limited to damages that we have foreseen at the time of concluding the contract as the possible consequence of a breach of contract, or considering the circumstances that we knew about or should have known about when exercising due diligence. Indirect damage and consequential damage resulting from defects in the delivered goods shall moreover only be recoverable if such damage could typically be expected when using the delivered goods in accordance with the intended use.
- 9.4. In the case of liability for ordinary negligence, our obligation to pay damages for material damage or personal injury shall be limited to the amount of € 1,000,000 per claim (corresponding to the current sum insured under our liability insurance), even if a material contractual obligation has been breached.
- 9.5. The foregoing exclusions of and limitations to liability shall apply to the same extent for our executive bodies, legal representatives, salaried employees and other vicarious agents.
- 9.6. If we provide technical information or consultancy services or if such technical information of consultancy services do not belong to the contractually agreed scope of services owed by us, this shall be done free of charge and to the exclusion of any liability.
- 9.7. The limitations of this no. 9 shall not apply to our liability for deliberate acts, for guaranteed characteristics, for injury to life, limb or health or under the German Product Liability Act [Produkthaftungsgesetz].

10 – Applicable law, legal venue

- 10.1. The law of the Federal Republic of Germany shall apply. The provisions of UN Convention of Contracts for the International Sale of Goods shall not apply.
- 10.2. If our contractual partner is a merchant, legal person under public law or special fund under public law, our registered office shall be the exclusive legal venue for all disputes including actions related to cheques and bills of exchange. This also applies if our contractual partner does not have a general legal venue in Germany or its domicile or customary place of residence is unknown at the time of bringing an action. However, we are also entitled to bring an action against the contractual partner at its legal venue.

11. Consent to processing of personal data

The buyer agrees that his personal data, i.e. name, company address, phone number, e-mail, position in the company, are processed by FAN Separator GmbH for business purposes and that these data are passed on to the parent company Röhren- und Pumpenwerk Bauer GmbH, Kowaldstrasse 2, A-8570 Voitsberg for central business processing. This consent may be revoked at any time in writing to Röhren- und Pumpenwerk Bauer GmbH, Kowaldstrasse 2, A-8570 Voitsberg. The revocation will not affect the legality of processing carried out so far.

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