

General Terms and Conditions for Deliveries, Hire and Services (hereinafter: GTC) of FABEMA GmbH

1. Scope of application

1.1 Our GTC apply to all contracts for the sale, hiring and maintenance of traffic safety equipment (traffic lights etc.).

1.2 These GTC apply exclusively and to all transactions with the same customer, even without this being expressly agreed. Conflicting purchasing conditions of the customer are expressly contradicted.

2. General provisions for all types of contract

2.1 Offer

2.1.1 We are bound by all offers for 30 days unless otherwise stated in the order confirmation. All agreements, including any collateral agreements, shall be in writing to take effect.

2.1.2 The contract is concluded according to the offered contents if and to the extent that the customer makes use of our services without contradiction and/or the services are rendered with his/her/its consent.

2.2 Rescission

2.2.1 Our services are subject to punctual delivery to us on the part of our suppliers. In the event that we are unable to provide the owed service permanently or insufficiently due to a lack of supply of goods and materials to us, we are entitled to rescind the contract. In this case, we notify the customer immediately after we have obtained knowledge of the impediment of performance and refund any payments already made.

2.2.2 This shall apply mutatis mutandis to force majeure unless we are liable for the impediment of performance ourselves.

2.3 Records/plans/masses

2.3.1 We reserve title and copyrights to illustrations, drawings, calculations and other documents. Before passing them on to third parties, the customer shall require our express written consent. The offer was prepared on the basis of the buildings specifications and plans available to us. Deviations of the configuration data require post-calculation.

2.3.2 Mass changes (increase) compared to the specifications shall not entitle the customer to adjust the standard price.

2.4 Assignment - set-off

2.4.1 The set-off of claims by the customer shall require our consent. We are entitled to assign our claims against the customer to third parties.

2.4.2 We are entitled to set off our claims against any claims of the customer. The customer is only entitled to set off any claims that are uncontested by us and/or have been legally established.

2.5 Prices - terms of payment

2.5.1 The prices stated in our quotations are subject to the proviso that the order data underlying the quotation remain unchanged. Prices are ex branch plus applicable VAT, packaging, freight and insurance.

2.5.2 In terms of invoicing, days of assembly and dismantling as well as days of delivery and return are considered as full days. This shall not apply if and to the extent that we use and bill the material assembled and dismantled for other purposes on the same day.

2.5.3 If additional costs arise due to exceptional circumstances beyond our control that were not identifiable at the time of conclusion of the contract, we are entitled to charge them to the customer. If additional measures are required with regard to a mains or other connection required at the place of installation, the customer shall bear the costs incurred.

2.5.4 If we assume the duty to safeguard traffic after agreement with the customer, we are entitled to charge the resulting time spent (for inspections in particular) accordingly.

2.5.5 Unless otherwise stated in the order confirmation, the net amounts outstanding on our invoices are payable within 30 days after the date of the invoice. Discount deductions and security deposits retained by the customer are not permitted.

2.5.6 The right of set-off is only granted to the customer if his/her/its counterclaims have been legally established or are untested or acknowledged by us.

2.5.7 We are entitled to request payment in advance or provision of security up to the amount of hire agreed for the contract period or the agreed remuneration for services. In the event of default in payment and justified doubts as to the customer's solvency or credit standing, we are entitled, without prejudice to our other rights, to demand security or advance payments for outstanding deliveries and to immediately invoice all claims arising from the business relationship.

2.5.8 Implementation of credit checks

- Creditreform Köln v. Padberg KG -

If we make advance payments (e.g. delivery on account), we reserve the right to carry out a credit check on the basis of mathematical and statistical procedures in order to safeguard our legitimate interest in determining the solvency of our customers. We transmit the personal data necessary for a credit check in accordance with Art. 6 (1) letter f GDPR to the following service provider: Creditreform Köln v. Padberg KG, Gustav-Heinemann-Ufer 68, 50968 Köln.

The credit report may contain probability values (so-called score values). Insofar as score values are included in the result of the credit report, they are based on a scientifically recognised mathematical and statistical procedure. The calculation of the score values includes, but is not limited to, address data. We use the result of the credit check with regard to the statistical probability of non-payment for the purpose of deciding on the establishment, implementation or termination of a contractual relationship.

You can object to this processing of your data at any time by sending a message to the person responsible for data processing or the aforementioned credit agency. However, we may still be entitled to process your personal data if this is necessary for contractual payment processing.

2.6 Delivery time - delay

2.6.1 The beginning of the delivery time specified by us requires the clarification of all technical questions. The delivery times are specified by us so that they are complied with in the ordinary course of business. They are subject to punctual delivery to us on the part of our suppliers. The beginning of the delivery period is the time at which the order was finally clarified and confirmed by us.

2.6.2 If we default on the provision of the service owed by us, this entitles the customer to rescind the contract only if he/she/it has previously unsuccessfully granted a grace period for performance.

Compliance with our delivery obligation further requires the timely and proper fulfilment of the customer's obligation.

If the customer is in default of acceptance or culpably violates other obligations to cooperate, we are entitled to demand compensation for the damage incurred in this respect, including any additional expenses. The right to assert any further claims shall remain reserved.

Provided that the conditions set out in sub-section (3) above are met, the risk of accidental loss or accidental deterioration of the item being sold passes to the customer at the time the latter is in default of acceptance or payment.

We are also liable pursuant to the statutory provisions if the delay in delivery is based on an intentional or grossly negligent breach of contract for which we are liable; if the delay in delivery is not due to an intentional breach of contract for which we are liable, our liability for damages shall be limited to damage that is foreseeable and that typically arises.

We are also liable pursuant to the statutory provisions if the delay in delivery for which we are liable is based on the culpable breach of a material contractual obligation; in this case, the damages are limited to damage that is foreseeable and that typically arises.

Further statutory claims and rights of the customer remain reserved.

2.7 Shipping - packaging

2.7.1. Unless otherwise stated in the order confirmation, delivery is agreed "ex works". Thus, the risk of accidental loss of the goods passes to the customer at the beginning of the transport or upon delivery of the goods into the custody of the carrier. The return of packaging is subject to special agreements. If requested by the customer, we will cover the consignment by a transport insurance; the costs incurred in this respect shall be borne by the customer.

2.7.2 Failing any special arrangements for the mode of dispatch, the goods will be shipped at our discretion.

2.7.3 When goods are collected by the customer or a third party commissioned by the latter, the collecting person is always responsible for securing the load and the admissibility of the maximum load. We are not a loader within the meaning of section 412 of the German Commercial Code (*Handelsgesetzbuch, HGB*). The attachment of the goods in a way safe for transport and operation and in accordance with the current state of the load-securing technology is carried out exclusively by the customer or the collecting person commissioned by him/her/it. The customer or the collecting person shall provide the required load-securing equipment. We do not control the load securing carried out by the customer or the person collecting the goods or his/her/its vicarious agent. In the event of any damage arising due to inadequate load securing, we are exempt from liability. The customer further indemnifies us from all claims of third parties due to missing or inadequate load securing to the extent that he/she/it is responsible for such claims arising.

2.8 General limitation on liability

2.8.1 For whatever legal reason, we are not liable for any damage caused to the customer due to slight negligence on the part of us, our bodies, representatives, employees, agents or vicarious agents. This does not apply to claims of the customer arising due to the breach of material obligations the fulfilment of which enables the proper performance of the contract and on the fulfilment of which the customer can therefore rely (material contractual obligations). In case of breach of the material contractual obligations due to slight negligence, our liability is limited to the foreseeable damage typically to be expected for this type of contract. Furthermore, in case of damage resulting from slight negligence, we are not liable for lost profits, consequential or indirect damage.

2.8.2 To the extent that we are excluded from liability in accordance with clause 2.8.1, this also applies to the own liability of our bodies, representatives, agents, employees and vicarious agents.

2.8.3 The limitations on liability pursuant to clauses 2.8.1 and 2.8.2 do not apply to any claims resulting from injury to life, health or body or claims based on product liability.

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3. Special conditions applying to sales contracts

The following provisions together with their provisions set out in clauses 1 and 2 shall apply to sales contracts.

3.1 Warranty

3.1.1 Warranty claims of the customer are conditional on the latter's proper compliance with his/her/its obligations under section 377 of the German Commercial Code to inspect and give notice of defects. Apparent defects must be notified no later than on the day of commissioning, after collection or delivery. Hidden defects can no longer be claimed, unless they are notified in writing at the earlier date of within 5 working days after commissioning or discovery of the defect. To comply with the stipulated deadlines, the date of dispatch of the written notice of defects shall be decisive. The customer must prove that he/she/it has sent the notice of defect within the prescribed period;

3.1.2 The warranty period for delivery products is one year.

3.1.3 Unless otherwise agreed, used goods are sold in the condition and with the quality that they have when handed over to the customer. The contractual nature of used goods includes in particular the typical damages, which is based on the age as well as on the previous wear and tear and the previous use of the goods.

3.1.4 Devices and technical systems may only be opened by the customer if the operating instructions provide for this and the customer has the required technical qualification. Our equipment and technical installations, which are sealed with security seals, must under no circumstances be opened by the customer. The seals are designed as adhesive seal or sealing wax. Within such devices are no parts that can be replaced or repaired by the customer. Traffic light systems are safety-relevant systems. Unauthorised and technically incorrect interventions can endanger human life. In the event of damage to devices and technical installations and a broken seal, the customer is obliged to inform our service staff immediately. Unauthorised access to sealed equipment and technical facilities will void any warranty granted.

3.1.5 Insofar as there is a defect in the object of sale, we are entitled to supplementary performance in the form of a remedy of defects or delivery of a new faultless object. In the event of removal of the defect, we bear the expenses only up to the amount of the purchase price. Supplementary performance is carried out at our discretion at the place of use or at our company headquarters. We bear the cost of freight to the company headquarters only if there is actually a material defect.

3.1.6 If the supplementary performance fails, the customer is entitled to demand rescission or reduction at his/her/its discretion.

3.1.7 To the extent permitted by law, claims for damages of the customer due to defects of the sold goods are excluded. The above provisions under this clause 3.1.7 do not apply insofar as any defects were fraudulently concealed by us from the customer or the defects relate to circumstances for which we have assumed a guarantee of quality towards the customer (section 444 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*)); in these cases, the warranty claims of the buyer are governed by the statutory provisions. In other respects, the provisions set out in clause 2.8 apply.

3.2 Reservation of title

3.2.1 We reserve title to the object of sale until receipt of all payments from the existing current account relationship (business relationship) with the customer; the reservation refers to the acknowledged balance. In case of breach of contract by the customer, in particular in case of default of payment, we are entitled to take back the object of sale. The withdrawal of the object of sale by us is a rescission of contract. After the goods have been taken back, we are entitled to realise them, the amount realised is to be credited against the customer's liabilities, less reasonable cost of realisation.

3.2.2 The customer is obliged to handle the object of sale with care; in particular, he/she/it is obliged to insure it at his/her/its own expense against damage caused by fire, water and theft, at replacement cost. If maintenance and inspection work is required, the customer must carry it out on time at his/her/its own expense.

3.2.3 In the event of seizure or other interference by third parties, the customer must notify us immediately in writing so that we can bring an action in accordance with section 771 of the German Code of Civil Procedure (*Zivilprozessordnung, ZPO*). To the extent that the third party is not in a position to reimburse us for the court and out-of-court costs of a claim in accordance with section 771 ZPO, the customer is liable for the loss incurred by us.

3.2.4 The customer is entitled to resell the object of sale in the ordinary course of business; however, he/she/it hereby assigns to us all claims in the amount of the final invoice amount (including VAT) of our claim accruing to him/her/it from the resale against his/her/its customers or third parties, irrespective of whether the object of sale was resold without or after processing. The claim assigned to us in advance by the customer also refers to the acknowledged balance and, in the case of the customer's insolvency, to the then existing "causal" balance. The customer remains authorised to collect this sum due even after the assignment. Our authority to collect the sum due ourselves remains unaffected. However, we undertake not to collect the claim as long as the customer meets his/her/its payment obligations from the proceeds received, does not default on payment and, in particular, no petition for the opening of settlement or insolvency proceedings or cessation of payments exists. However, if this is the case, we may demand that the customer notify us of the assigned claims and their debtors, provide all information necessary for collection, hand over the associated documents and notify the debtors (third parties) of the assignment.

3.2.5 The processing or transformation of the object of sale by the customer is always made for us. If the object of sale is processed with other items not belonging to us, we acquire co-ownership of the new item in proportion of the value of the object of sale (final invoice amount, including VAT) to the other processed items at the time of processing. In addition, the same applies to the item resulting from processing as to the object of sale delivered with reservations.

3.2.6 If the object of sale is inseparably mixed with other items not belonging to us, we acquire co-ownership of the new item in proportion of the value of the object of sale (final invoice amount, including VAT) to the other mixed items at the time of mixing. If the mixing takes place in such a way that the customer's item is to be regarded as the main item, it is agreed that the customer assigns proportional co-ownership to us. The customer shall preserve the resulting sole or co-ownership for us.

3.2.7 The customer also assigns to us the claims to secure our claims against him/her/it, which accrue by the connection of the object of sale with a plot against a third party.

3.2.8 We undertake to release the securities to which we are entitled on request of the customer to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10%; the selection of the securities to be released is our responsibility.

4. Special conditions for contracts of hire and transfer agreements

The provision of traffic safety objects (hire) for a consideration is subject to the following provisions together with the general provisions set out in clauses 1 and 2.

4.1 Payment - remuneration

4.1.1 The customer is obliged to pay the rental charge as agreed. If the customer completely or partially defaults on the payment of the rental charge and/or other amounts owed under the contract of hire and if he/she/it does not compensate the arrears within one week after receipt of a corresponding reminder, we are entitled to refuse or withhold the services incumbent on him/her/it under the contract of hire until the arrears are settled. For this purpose, we are in particular entitled to prohibit the customer from further use of the hired article. In this case, we are further entitled to demand the return of the hired article without notice.

4.1.2 The rental charge is determined by the currently valid price list and the expected minimum term of hire. If the latter is fallen below, the rental charge as well as the costs for delivery/assembly, dismantling/collection and program preparation/VTU etc. will increase in accordance with local and adequate conditions. In the case of installation for which a special rental charge has been agreed, the agreed minimum term of hire is taken as the term of hire.

4.1.3 Costs for possibly resulting services are at the expense of the customer. Full service is excepted. This includes a 24-hour emergency and maintenance service.

4.1.4 If the agreed term of hire is exceeded, the customer has to pay the additional term of hire according to the agreed prices unless we are responsible for the excess. Claims for damages arising from the retention of our hired articles remain unaffected.

4.2 Warranty – damage caused by the customer - cooperation

4.2.1 If there is a defect in the hired articles that constitutes claims based on defects under tenancy law, we will replace the hired article or repair it at our discretion. After unsuccessful supplementary performance as above, the customer is entitled to reduce the rental charge or to rescind the contract. Insofar as there is no functional impairment, signs of wear and tear on the hired articles are no defects.

4.2.2 To the extent permitted by law, claims for damages of the customer due to defects are excluded. In any case, the liability limitations set out in clause 2.8 apply.

4.2.3 We are not liable for any third-party damage that emanates from the hired articles. Claims of the customer for compensation of indirect damage are also excluded. Liability for damage caused intentionally or by gross negligence remains in accordance with the statutory provisions.

The customer is obliged to protect the hired articles from overuse in any way. In that regard, the customer may, for instance, not affix advertising of his/her/its own or not approved by us to the hired articles and/ or remove or suppress our proprietary notices. If the hired articles are damaged, destroyed, stolen or otherwise lost during the term of hire, the customer shall bear the repair costs or the costs of new acquisition we incur, even if no fault can be attributed to him/her/it. Basically, the equipment is not insured against the above-mentioned damage (theft/ vandalism). An insurance in favour of the customer at his/her/its expense requires a separate written agreement. In the event of an insurance contingency, the customer must lay an information with the police. A copy of this information is to be handed over to us. If the person responsible is known, the claims settlement with the insurance company is incumbent on the customer. The resulting damage is charged directly to the customer. The insurance does not include batteries against deep discharge (<1.20).

4.2.4 The application of yellow type I marking film can only be carried out under dry conditions and at ground temperatures above 5°. From 1st November to 31st March, no warranty is given for marking work in accordance with ZTV-M84 (*additional technical regulations and guidelines for markings on roads*).

4.2.5 Using hired articles at a place other than the contractually agreed place of use or renting them to third parties without our prior consent is not permitted. Upon our informal request, we are to be informed about the local whereabouts of the hired articles.

4.2.6 Traffic light systems may only be operated with original FABEMA system components or third-party products approved in writing. To connect the traffic signal systems, only the FABEMA system cables must and can be used. Other cables and externally procured connectors do not meet the specification for trouble-free and safe operation of the system.

4.2.7 Using third-party or unspecified products is not permitted. The safe operation of the system might be at risk. We are not liable for unauthorised modification of the traffic signals or unauthorised use of non-authorised third-party products.

4.2.8 The customer is obliged to treat the hired articles properly and to return them after the end of the term of hire in undamaged and clean condition carriage paid and packed or to have us pick them up against reimbursement of the costs incurred. In the case of return, transport damage shall be for customer's account. Returned items that show any damage or dirt not yet existing at the time of transfer, are cleaned or repaired at the prices stated in our price list. If a repair is no longer economic or actually impossible, we will charge the customer the replacement cost according to value when new. In this case, the customer has the right to collect and keep the replaced damaged item within 14 days at his/her/its expense.

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4.2.9 The customer is obliged to provide a 230V/16A power supply as well as the agreed assembly personnel on site at the planned location of the object on the assembly day. If, due to a non-existent power supply, it is not possible to assemble the system or if additional time is required due to the lack of assembly personnel, the additional costs incurred due to the futile or delayed assembly must be borne by the customer separately.

4.3 Authorities – permissions – assembly – inspection trips

4.3.1 Traffic sign plans and signal timing schedules are produced in accordance with legal provisions.

4.3.2 Unless otherwise agreed, fees of the ordering authority are at the expense of the customer and will be recharged with a processing surcharge of 10%, but at least EUR5.00. Unless otherwise agreed in writing, permission from an authority must always be asked for at the expense of the customer.

4.3.3 If the ordering authority rejects the building measure, the prepared and established traffic sign plan / signal timing schedule must be acknowledged as service rendered and the bill must be settled in accordance with the order confirmation.

4.3.4 The above-mentioned prices for the assembly, conversion and dismantling of the traffic safety equipment and/ or the signal system relate to their implementation within business hours (Mon to Thurs 7:00 a.m. to 4 p.m. and Fri. 7:00 a.m. to 1 p.m.); if unscheduled work outside these times is necessary for any reasons beyond our control, surcharges shall be paid by the customer on the agreed prices, which correspond to the local custom and adequacy even if this is not contracted separately.

4.3.5 If, contrary to expectation, a contractually agreed construction measure is not effected, the costs for the preparation of the transport documents are to be paid by the customer in accordance with local custom and adequacy even if no separate fee has been contractually agreed for this.

4.3.6 Costs incurred by having the operator turn an existing fixed signal system off and on shall be recharged to the customer, even if this is not contracted separately.

4.3.7 If no control trips according to sub-sec. 7 ZTV-SA (*additional technical contract terms for work on signals*) have been agreed by us, the duty to safeguard safety is exclusively incumbent on the customer. In this respect, the latter has to travel twice per day for the proper fulfilment of the duty to safeguard traffic. Our company is not to be held liable for damage caused by our protection materials. The verification of functionality of the construction site lighting is the sole responsibility of the customer.

4.4 Term of hire

4.4.1 The hire begins on the day of delivery or the date specified in the contract and ends on the date of return. This can only be done during the business hours (Mon to Thurs 7 a.m. to 4 p.m. and Fri 7 a.m. to 1 p.m.) of the FABEMA service centre in Cologne, Hansestraße 72a, 51149 Köln-Porz, or those (Mon to Thurs 7.30 a.m. to 4.30 p.m. and Fri 7.30 a.m. to 1.30 p.m.) of the Kahla location (Thuringia), Im Camisch 48, 07768 Kahla. For freight, the hire runs from the date of collection or the date specified in the contract until the date of return delivery by the forwarder. The term of hire is counted in full calendar days. Termination of contract with notice by the customer during the term of hire is excluded. However, we are entitled to give 5 days' notice of termination of the contract. The mutual right to terminate the contract without notice remains unaffected.

4.4.2 We are entitled to terminate the contract of hire without notice if there is good cause. This would especially be the case if the customer

4.4.2.1 – filed an insolvency petition or had been in arrears with his/her/its payments for more than 4 weeks;

4.4.2.2 – provided the hired article to third parties or pledged it or otherwise disposed of it or tried to dispose of it;

4.4.2.3 – treated the hired article improperly or damaged it;

The foregoing is not an exhaustive list.

4.4.3. The customer shall give notice of withdrawal exclusively by fax or by e-mail, but not by phone.

4.4.4. If collection by us has been agreed, the customer must agree the exact delivery time by 3 p.m. on the working day preceding collection. If the collection cannot be carried out due to circumstances for which the customer is responsible, the term of hire is extended accordingly and the customer bears the costs for calling out our company again.

5. Special conditions for services

These provisions shall apply together with the general provisions set out in sections 1 and 2 for repair, inspection and after-sales service, the installation of spare parts and service contracts which do not represent a warranty. Services are all services provided by FABEMA, e.g. for the repair, inspection and after-sales service, installation or delivery of spare parts and replacement parts and services from service contracts that are not related to warranty work or work that (re-)puts the hired article in the contractual condition.

5.1 The order will be carried out by us on site on the customer's premises or at the place of installation of the device. We can make the execution of the order conditional on the fact that the ordered item is brought to FABEMA's workshop, if this is necessary according to the type and extent of the repair and maintenance work to be carried out. Travel expenses, transport and delivery costs are borne by the customer unless they relate to the assertion of claims for defects due to poorly performed services by us. If the location, scope or conditions of use of a hired article change, we are entitled to adjust the service fee accordingly.

5.2 Prices are determined by the contract provisions.

6. Final provisions

6.1 If individual provisions of these General Terms and Conditions are or become void or legally invalid, the validity of the other provisions shall remain unaffected. In this case, the contracting parties undertake to agree on a legally valid provision in lieu of the invalid provision that most economically approximates the invalid provision.

6.2 The law of the Federal Republic of Germany exclusively applies to the exclusion of the UN Convention on the International Sale of Goods (CISG).

6.3 If the customer is a merchant, a legal entity under public law or a special fund under public law, venue for all disputes arising directly or indirectly from the contractual relationship shall be Cologne or Bergisch Gladbach.

6.4 Unless otherwise stated in the order confirmation, our principal place of business is the place of performance.