

GENERAL TERMS AND CONDITIONS FOR DELIVERY, SALES AND ASSEMBLY



These conditions apply to all deliveries and services, in particular, sales, the performance of services, and assembly, unless there is a separate alternative agreement in written or text form between FOOKE GmbH and the customer.

I. General

1. These conditions, as well as any separate contractual agreements, apply to all deliveries and services, service work and assembly work from FOOKE GmbH. Differing purchase conditions from the customer do not form part of the contract, even on acceptance of the order. A contract is established, unless otherwise agreed, when FOOKE GmbH confirms the order. For assembly tasks undertaken by FOOKE GmbH, the conditions specified in VII also apply, unless alternative agreements have been made for the specific case.
2. FOOKE GmbH reserves the right to ownership and copyright of templates, proposals, quotes, drawings and other tangible and intangible forms of information, including electronic forms. These may not be provided to third parties. FOOKE GmbH undertakes not to disclose the customer's confidential information and documents to third parties without the customer's consent. Drawings, specifications and other documents associated with the quotes shall be returned to FOOKE GmbH if the contract is not awarded.
3. FOOKE GmbH reserves the right to alter the technical details of the product before release, to the extent that this is reasonable for improvements to product performance or reliability, or in order to comply with certification requirements or official guidelines. FOOKE GmbH will inform the customer immediately about changes. The customer may object within two weeks of receiving the information, should the changes adversely affect the fitness for purpose of the object of the delivery.
4. Oral agreements by telephone or conversations with our representatives are only legally binding if they are confirmed in writing or text form by a legally authorised representative of FOOKE GmbH.

II. Prices and payment

1. Offers and prices are non-binding. Furthermore, unless otherwise agreed, the prices are ex-works, including factory handling, but not including packaging and other transport and shipping costs. The statutory VAT will be added to the prices. The customer is responsible for any duties, fees, taxes and other public levies.
2. Unless otherwise agreed, the payment shall take place without any deductions. The invoice amounts are due to be paid to one of our accounts after delivery, in accordance with the relevant invoices issued by FOOKE GmbH.
3. The customer only has the right to offset counter-claims to the extent that the customer's counter-claims are uncontested or have been established as legally binding. The same applies to the exercise of a right of retention.

III. Delivery time, delivery delay

1. The delivery time is determined by the agreements between the contracting parties. It can only begin and be complied with providing all technical questions that remained open at the time the contract was concluded, e.g. customer-specific concretisations, specifications, etc., have been clarified between the contracting parties, and the customer has fulfilled all commitments incumbent on it, e.g. obtaining the necessarily official certification or approvals, or making a down payment. Otherwise, the delivery time is extended accordingly. This does not apply if FOOKE GmbH is responsible for the delay.
2. Compliance with the delivery time is subject to correct and timely upstream supply to FOOKE GmbH. FOOKE GmbH will inform the customer immediately about impending delays.
3. The delivery period for delivery without installation or assembly is complied with if, by the end of the period, the object of the delivery has left the FOOKE GmbH factory, or has been reported ready for shipping, or collected by the customer. In the case of delivery with installation or assembly, the delivery period is complied with when this has been completed within the agreed period.
4. If shipping or collection of the object of the delivery is delayed due to reasons for which the customer is responsible, then the costs that result from the delay will be charged to the customer, beginning one month after the object has been reported ready for shipping.
5. If the delivery time is not complied with as a result of *force majeure*, industrial action or other events outside the control of FOOKE GmbH, or due to later alterations required by the customers, then the delivery time is extended accordingly. FOOKE GmbH will inform the customer as soon as possible on start and end of such circumstances.
6. If the delivery period is not met for other reasons, the customer – providing a grace period set by the customer has expired and the customer demonstrates that they have been subject to loss due to the delay – may demand delay compensation for each week of delay following the grace period. The amount of the compensation shall be from 0.5 % to a maximum of 5 % of the value of each part of the delivery and services that it was not possible to put into proper operation due to an associated item not being ready on time.
7. Independently of this, and unless otherwise agreed, FOOKE GmbH's liability for delay compensation (Section 286 of the German Civil Code) – in precedence to Section VIII – is limited to a total maximum of 5 % of the price/value of the goods or services delivered too late.
8. The customer can withdraw from the contract without a grace period if it becomes ultimately impossible for FOOKE GmbH to complete the service before the transfer of risk. In addition, the customer can withdraw from the contract if the execution of part of the delivery for an order becomes ultimately impossible, and the customer has an urgent legitimate interest in rejecting the partial delivery. If this is not the case, the customer must pay the part of the contract price due for the partial delivery. The same applies to incapacity of FOOKE GmbH. Section VIII also applies.
9. If shipping or delivery is delayed at the instigation of the customer or due to circumstances that the customer is responsible for, FOOKE GmbH may demand storage costs to the amount of 0.5 % of the invoiced amount for each month commenced after informing the customer that the object is ready to ship. The storage costs are limited to 5 % of the invoiced amount. The customer is entitled to demonstrate that the storage costs were lower or non-existent.

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10. If the aforementioned impossibility or incapacity occurs during the delay in acceptance, or if the customer is solely or largely responsible for these circumstances, the customer remains liable for payment.

IV. Transfer of risk

1. For deliveries, the risk is transferred to the customer when the object of delivery has left the factory, even if partial deliveries take place or if FOOKE GmbH has undertaken further services, e.g. shipping or delivery and installation (assembly).
2. If shipping is delayed or does not take place due to circumstances that are not the responsibility of FOOKE GmbH, the risk is transferred to the customer on the day that the object is reported ready for shipping. FOOKE GmbH has the right, subject to agreement with the customer, to take out insurance at the customer's expense, but is not obliged to do so unless the customer so instructs.
3. Partial deliveries are acceptable provided that they are reasonable for the customer.

V. Retention of title

1. FOOKE GmbH retains the title to the object of the delivery until all open payments from the customer have been paid.
2. The customer is obliged to handle with care all goods delivered subject to retention of title, and to insure them against theft, breakage, fire, water and other damages. FOOKE GmbH has the right to insure the object of delivery at the customer's expense, if the customer has not demonstrably taken out insurance.
3. The customer may not pledge the object of delivery or assign it as collateral. In case of seizure, confiscation or other dispositions by a third party, the customer must notify FOOKE GmbH immediately.
4. In case of breach of contract by the purchaser, in particular in case of non-payment of the due purchase price, the seller is entitled to withdraw from the contract according to the statutory provisions and to demand return of the object of delivery on the basis of retention of title and the withdrawal. Should the purchaser fail to pay the purchase price, the seller may only assert these rights once the seller has first unsuccessfully given the purchaser a suitable period for payment, or if such a term may be dispensed with according to legal provisions.
5. The customer has the right to resell the object of delivery in the ordinary course of business. It is obliged to retain the title to the object of delivery until payment has been received in full from the third party. However, the customer hereby cedes to FOOKE GmbH all claims in the amount of the invoice value of the reserved goods that accrue to the customer resale vis-a-vis the purchaser or against third parties as a result of the resale. The customer is authorised to collect these claims even after the transfer, providing it acts in accordance with the contract and is not unable to pay its debts. The customer must immediately transfer to FOOKE GmbH the amounts that it collects for FOOKE GmbH in relation to the resale. FOOKE GmbH's right to collect these on its own behalf remains unaffected; however, FOOKE GmbH undertakes not to collect these claims, providing the customer behaves correctly towards FOOKE GmbH with regard to its payment obligations, and is not unable to pay its debts. Otherwise, FOOKE GmbH may demand, after a suitable grace period, that the customer discloses the transferred claims and their debtors, provides all details necessary for collection, hands over the associated documents and notifies the debtors of the transfer. FOOKE GmbH undertakes to release the securities due to it insofar as the invoice value of the reserved goods exceeds the claims to be secured by more than 15 %, to the extent that these have not yet been paid.

VI. Claims for defects

For purchase agreements and contracts for labour and materials, the commercial obligations to report defaults in accordance with Sections 377 and 381 of the German Commercial Code are to be observed and complied with immediately. The defect notification must take place in text form. For material defects and legal deficiencies in the delivery, FOOKE GmbH makes the following guarantee, to the exclusion of further claims – subject to Section VIII.

Material defect:

1. All parts that turn out to be defective as the result of a circumstance prior to the transfer of risk shall be repaired or replaced with non-defective parts (at FOOKE GmbH's choosing) free of charge. FOOKE GmbH shall be immediately informed in writing when such defects are found. Replaced parts are the property of FOOKE GmbH.
2. After notifying FOOKE GmbH, the customer shall give FOOKE GmbH the necessary time and opportunity to carry out all repairs and replacement deliveries that appear necessary to FOOKE GmbH; otherwise FOOKE GmbH is released from liability for the resulting consequences. In urgent cases where operational safety is endangered or to prevent disproportionately large damages, the customer has the right to rectify the defect itself or have it rectified by a third party and to demand compensation from FOOKE GmbH for the necessary expenses. FOOKE GmbH must be notified immediately.
3. Of the costs immediately arising from the repair or replacement delivery, FOOKE GmbH shall bear the costs of the replacement part, including shipping, providing the claim proves to be justified. It shall also bear the costs of disassembly and reassembly, the costs of providing any assembly and auxiliary staff necessary (including travel costs), providing that this does not result in a disproportionate burden on FOOKE GmbH.
4. The customer has the right to withdraw from the contract within the scope of the statutory regulations if FOOKE GmbH – taking into account the statutory exceptions – allows a reasonable deadline that has been set for the repair or replacement of a defect to expire without the defect being repaired. If there is only an insignificant defect, the customer is only entitled to a reduction in the contract price. The right to a reduction in the contract price is otherwise unaffected.
5. Claims for compensation for damages due to a defect are governed by Section VIII of these conditions.
6. In particular, no liability is assumed in the following cases:

- Unsuitable or improper use, faulty assembly or commissioning by the customer or third parties, natural wear, faulty or negligent handling, improper maintenance, unsuitable equipment and raw materials, inadequate construction, unsuitable ground and unsuitable foundations, faulty structural, chemical, electrochemical or electrical influences – where FOOKE GmbH is not responsible for these.
- 7. If the customer or a third party carries out improper repairs without the required agreement from FOOKE GmbH, FOOKE GmbH assumes no liability for the consequences. The same applies to alterations to the object of the delivery undertaken without prior agreement from FOOKE GmbH.
- 8. Merely rendering repair services does not constitute acknowledgement of legal obligation. Only managers who are authorised to represent FOOKE GmbH are authorised to acknowledge legal obligations.
- 9. If a defect notification turns out to be unjustified, the customer is obliged to repay FOOKE GmbH the expenses caused by the defect notification.

Defects of title:

- 10. Unless otherwise agreed, FOOKE GmbH's responsibilities to ensure that object of delivery does not infringe industrial property rights or third-party copyright (hereinafter property rights) is limited to Germany and the country where the delivery takes place. In the case of infringements of property rights, FOOKE GmbH shall obtain for the customer the right to further use, or modify the object of delivery in a manner acceptable to the customer such that the infringement no longer exists. If this is not possible on commercially reasonable terms or within a reasonable period of time, the customer has the right to withdraw from the contract. FOOKE GmbH also has the right to withdraw from the contract under these conditions. Furthermore, FOOKE GmbH shall release the customer from justified or legally established claims from the copyright holders.
- 11. The obligations for FOOKE GmbH referred to in Section VI.10 are final, subject to Section VIII in the case of infringement of property rights or copyrights. They only arise if:-
 - a. the customer informs FOOKE GmbH immediately about any alleged infringements of industrial property rights or copyrights,
 - b. the customer supports FOOKE GmbH to a reasonable extent in defending the claims asserted, or makes it possible for FOOKE GmbH to carry out the modification according to Section VI.10,
 - c. all defence measures including extrajudicial regulations are reserved to FOOKE GmbH,
 - d. the defect does not result from the customer's instruction,
 - e. the infringement of rights was not caused by the customer making unauthorised alterations or alterations not in accordance with the contract to the object of the delivery .

Warranty commitments

Solely the legal representatives of FOOKE GmbH are authorised to submit warranty commitments.

VII. General conditions of assembly

1. Assembly price

- a. Unless the parties have expressly come to a price agreement in the underlying contracts (service contract, order/order confirmation): the usual remuneration will be charged for each assembly operation, based on time taken and expenses, including standard surcharges.
- b. Agreed amounts are net and subject to VAT at the statutory rate. For assembly in foreign countries, special tax rules may apply. In particular, the customer undertakes to reimburse FOOKE GmbH for legitimate claims of sales tax by the foreign financial authority, providing FOOKE GmbH was not responsible for the claim.

2. Customer involvement

- a. Unless otherwise agreed in writing, the customer must support the assembly team with the assembly process, at its own expense.
- b. The customer must inform FOOKE GmbH about existing special safety regulations where these are relevant to the assembly team. The customer will inform FOOKE GmbH if the assembly team violate any such safety regulations. In the case of serious infringements, the customer, in consultation with FOOKE GmbH, may refuse the offender access to the assembly site.
- c. Unless otherwise agreed in writing, the customer shall provide, at its own expense and in good time:
 - i. all earthwork, construction and other ancillary work, including the necessary skilled and auxiliary workers, construction materials and tools,
 - ii. the equipment and materials necessary for assembly and commissioning, such as scaffolds, lifting equipment and other devices, fuels and lubricants,
 - iii. energy and water at the point of use including, including connections, heating and light,
 - iv. at the assembly site, sufficiently large, suitable, dry and lockable area for storage of machine parts, apparatus, materials, tools, etc., and suitable working and recreation areas for the assembly team, including appropriate sanitary facilities. The customer must also take such measures for protection of property and the assembly team as it would take to protect its own property/staff,
 - v. to the extent necessary due to special circumstances at the assembly site, personal protective equipment and guards,
 - vi. all measures and activities necessary to prevent accidents,
 - vii. other supporting activities that are reasonable or necessary for assembly.
- d. Before beginning assembly, the customer must provide, at its own expense and unasked, the necessary information about location of concealed electric power, gas and water lines or of similar installations, and the necessary information.
- e. Before beginning installation or assembly, the materials and equipment necessary for the work must be located at the assembly/installation sites, and all preparatory work prior to assembly must have progressed to the extent that

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the installation or assembly can begin as agreed and be carried out without interruption. The place of performance, including the routes to the place of performance, must be prepared for installation, assembly and/or mounting.

- f. If installation, assembly or commissioning is delayed due to circumstances for which FOOKE GmbH is not responsible, the customer shall bear the reasonable costs for the idle time or any additional travel incurred by the assembly team.
- g. The object of the delivery shall be unloaded by FOOKE GmbH and the customer together. Damages to the object of the delivery resulting from errors during unloading are to be borne by the party responsible for the error.
- h. Any change to the underlying contracts, in particular to the confirmation of order, is only effective if confirmed either by the FOOKE GmbH management or jointly by two authorised signatories.

3. Acceptance

- a. The customer is obliged to accept the assembly as soon as the customer has been notified of its completion and any contractually agreed trial of the assembled object has taken place. If acceptance is delayed through no fault of FOOKE GmbH, then acceptance shall be deemed to have taken place two weeks after notification of completion of assembly.
- b. If the assembly proves not to be in accordance with the contract, FOOKE GmbH is obliged to remedy the defect. The duty to issue a defect notification in accordance with Sections 377 and 381 of the German Commercial Code also applies to assembly.

4. Miscellaneous

Items III, IV, VIII, IX, and X also apply accordingly.

VIII. Liability

FOOKE GmbH and its subcontractors shall be liable to the customer in cases of intent or gross negligence, in accordance with the statutory provisions. The same applies to damages resulting from harm to life or health caused by negligence.

In case of negligently caused damage to property and pecuniary loss, FOOKE GmbH shall only be liable in the event of a breach of a material contractual obligation, but limited in amount to the damages foreseeable at the time of the conclusion of the contract and typical for the contract. Material contractual obligations are those whose fulfilment characterises the contract and that the customer can rely on.

IX. Limitation period

All claims by the customer – regardless of their legal grounds – expire after 8 months. The statutory periods apply to claims for damages according to Section VIII. These shall also apply for defects of delivered goods that were used for a structure in accordance with their normal use, and caused it to be defective.

X. Applicable law, place of jurisdiction and place of performance

1. German law applies, excluding the complete United Nations Convention of Contracts for the International Sale of Goods of 11 April 1980.
2. The place of jurisdiction is the competent court for the headquarters of FOOKE GmbH if the customer is a business, a legal entity under public law, or a special fund under public law. However, FOOKE GmbH is entitled to file suits at the customer's head office.
3. The place of fulfilment for all obligations arising from this contract is the FOOKE GmbH headquarters, for both parties.