

General

The following terms and conditions apply to all orders from FOOKE GmbH, unless expressly agreed otherwise in writing or text form. They also apply to future business relationships, even if these are not expressly agreed. We only acknowledge general terms and conditions, in particular the supplier's delivery and service conditions, if we expressly agree to these in writing.

The delivery must correspond to the purpose and the state of the art. All statutory regulations, EU law, in particular the applicable EU directives and safety and accident prevention regulations, guidelines, and health and environmental requirements must be complied with.

All documents required for this compliance also constitute part of the delivery scope and are to be made available to FOOKE GmbH free of charge.

1. Orders, documentation, acceptance of orders

- a. Orders are only valid and binding when they are written or in text form. Documentation for the order (e.g. drawings, parts lists, invoices, etc.) is to be kept confidential and returned to FOOKE GmbH without a separate request. No extracts, copies, or other reproductions may be passed on to potential subcontractors without our consent, unless this is essential to the execution of the order.
- b. Acceptance of deliveries and services is subject to checking for freedom from defects, in particular to accuracy in terms of quantity, identity between order and delivery. Acceptance of and payment for the delivery does not mean that FOOKE GmbH acknowledges it to be free of defects.
- c. FOOKE GmbH reserves the right to withdraw orders if we do not receive order confirmation from the supplier within 2 weeks of the order date.

2. Prices, invoices, payment

- a. The prices agreed with FOOKE GmbH are fixed prices including packaging and uninsured point of reception, and, unless otherwise agreed, are not subject to additional costs.
- b. If, in an exceptional case, an ex-works or supplier warehouse price is agreed, FOOKE GmbH only assumes the most economical and verifiable freight costs.
- c. All invoices are to be submitted in single copy by email to FOOKE GmbH at invoice@fooke.de or sent by post, unless otherwise agreed in writing or text form.

As long as the supplier is in arrears with its services, or claims for reparatory services are being asserted, no invoice is due.
- d. Agreed down payments that have been paid do not indicate that the bill has been acknowledged.

3. Retention of title, transfer, Offset restrictions

- a. We only accept the simple retention of title of the supplier. Transfer of claims against FOOKE GmbH is subject to the approval of FOOKE GmbH.
- b. The supplier does not have the right to offset our claims if the supplier's claims are not based on the same legal relationship. Offsetting our claims is only possible for undisputed or legally established claims, Offsetting our claims with companies associated with the supplier is excluded.

4. Delivery time, delivery period

- a. The delivery times stated in our orders are binding.
- b. An agreed delivery period begins on the date of order.
- c. If the supplier has reason to believe that timely delivery may be impossible in whole or in part, it must inform us immediately.
- d. In the case of culpable delivery delays, it is possible to offset agreed contractual penalties against the supplier's payment claim. In this case, the supplier pays a penalty to the amount of 2 % of the net invoice amount for each week commenced, however with a maximum of 5 % of this sum, unless otherwise agreed in writing.
- e. If the supplier is in default with its services according to the German Civil Code, FOOKE GmbH has the right, after a reasonable grace period has expired, to demand either completion of the service and compensation of damages due to late delivery, or damage compensation in place of delivery, and to withdraw from its contract with the supplier.
- f. All deliveries shall be made at the supplier's risk. The transfer of benefits and risks takes place on acceptance of the delivery at the place of fulfilment.
- g. For each delivery, the supplier must send us a shipping notice on the day of dispatch of the goods.
- h. Deliveries of replacement parts must take place within 24 hours of order placement.
- i. Repairs must be carried out within 24 hours of the supplier receiving our repair request.
- j. Partial deliveries and/or deliveries before the agreed date require prior approval from FOOKE GmbH. Any additional costs resulting from early delivery or partial delivery shall be borne by the supplier, unless the early/partial delivery was expressly desired by FOOKE GmbH.

5. Shipping

- a. Higher costs that may result from a deviation from the agreed delivery process will only be acknowledged by FOOKE GmbH if they have been agreed in writing. In particular, this applies to deliveries sent by the fasted method due to agreed deadlines not being met.
- b. All shipments shall be sent free of freight costs and incidental expenses. If the delivery takes place ex-works or free to recipient, refund claims for freight and other costs associated with the delivery shall only be due on receipt of the invoice. Unless otherwise agreed in writing, the supplier shall bear the labour and material costs for shipping, shipping documents, standard commercial packaging, etc. In order to avoid damage in transit due to the load being unsecured or badly secured, the supplier shall ensure that the delivery is secured. The supplier is responsible for all damages and costs resulting from failure to correctly observe these regulations.

Every delivery shall be accompanied by a delivery note that enables the quantity, quality, and identity of the delivered goods to be rapidly checked against the order. The delivered goods must have identifying labels. The labels should include, at a minimum, the following data about the goods: FOOKE order number; FOOKE item number; supplier order number, supplier item number, product identification, type.

If the supplier does not comply with this, the resulting costs shall be borne by the supplier. FOOKE GmbH is also entitled to reject the delivery.

6. Safety and environmental protection

- a. Deliveries and services must comply with statutory provisions, in particular the safety and environmental protection regulations, including the regulation on hazardous substances, and the electrical and safety recommendations of the competent German professional bodies or trade associations – for example, DIN, VDE, VDI. The supplier guarantees that the delivered products conform to the guidelines specified by FOOKE GmbH and are labelled in line with statutory and official regulations. Relevant certifications, test documents and other evidence shall be included in the delivery free of charge.
- b. The supplier is obliged to identify the current status of directives and laws relating to substance restrictions relevant to its components, to comply accordingly and not to use forbidden substances. The supplier guarantees that, to the extent it is affected by the REACH Regulation, it is registered in accordance with the provisions of the Regulation, and has fulfilled any other obligations required by the Regulation. The supplier furthermore guarantees that there are no hazardous substances (based on the current relevant ECHA candidate list (SVHC)) contained in its products. Hazardous substances and those which must be avoided according to laws and directives must be indicated by the supplier on the specifications. If applicable, the safety data sheets should be provided at the time of quote and along with the delivery note with the applicable first delivery.

If substance restrictions are exceeded, or forbidden substances are delivered, we must be informed immediately; where possible, at the time of the quote or confirmation of contract.

- c. The supplier bears sole responsibility for compliance with accident prevention regulations during deliveries and provision of services. The necessary protective devices and any instructions from the manufacturer must be included free of charge in the delivery.

7. Technical facilities and installations

- a. The supplier is obliged to fit out technical facilities and installations in line with the latest state of the art (provided that this does not violate the recognised rules of technology), and in compliance with the relevant laws, regulations and conditions, in particular in compliance with the German Occupational Health & Safety Act, the German Industrial Safety Regulation and the German Equipment and Product Safety Act (GPSG), and their regulations and technical rules. The directly applicable EC directives must be complied with, in particular Directive 98/37 EC (Machinery Directive), 73/23 EEC (Low Voltage Directive) and 89/336 EEC (EMC Directive).
- b. The supplier is responsible for ensuring that the facilities do not use more energy than is required for their intended use. The most energy-efficient drives, motors and other active components shall be used for the facilities. The total energy requirements of the facility may not be more than that of a comparable reference facility with the same construction type and size/capacity.
- c. The supplier shall inform us about any expertise required for operation, maintenance and servicing, and any inspections that are necessary to proper use and fault-free operation, and shall provide the corresponding documentation free of charge, e.g. maintenance instructions, in particular component and parts lists in FOOKE quality and format (including manufacturer, item number, product description, type)

8. Quality

- a. The supplier shall implement a quality management system that is appropriate in type and scope, and corresponds to the current state of the art, and demonstrate this to FOOKE GmbH on request.
- b. The supplier shall ensure that its employees have the requisite skills and any necessary qualifications to carry out the required services.
- c. FOOKE GmbH has the right to visit the supplier's business premises at any time during normal business hours, without prior notification, and have its own people verify that the supplier complies with the guaranteed quality standards. For this purpose, the purchaser and any third parties commissioned by the purchaser are entitled to inspect the relevant documentation to be provided by the supplier, and to examine the materials that the supplier requires to carry out the order.

d. The supplier is obliged to ensure that FOOKE GmbH or the third parties commissioned by it (in particular, auditors of a quality management system) have unhindered access to the areas, materials and relevant documentation, and to prove to FOOKE GmbH on request that its own quality tests are carried out.

e. The supplier is obliged to constantly check and document the quality of the object of the delivery by means of quality tests. The supplier must store the test documents for ten years and submit them to FOOKE GmbH on request. Within the scope of the legal options, the supplier shall oblige upstream suppliers to comply with the requirements of the quality audit and to monitor compliance by means of appropriate checks.

The supplier is obliged to inform the purchaser about defective products, and, to the extent that they are suitable for use, to obtain prior written consent from FOOKE GmbH.

f. Changes to the object of the delivery require the prior written consent of FOOKE GmbH. This also applies to changes to the object of the delivery that result from changes to the production process, the production site, or the use of different materials.

9. Warranty and recourse

a. In accordance with the statutory provisions, the supplier guarantees that, upon delivery to FOOKE GmbH, the object of the delivery is free from material defects and defects of title, has the agreed quality and guaranteed properties, and complies with the recognised state of the art – in particular with the relevant protection and accident prevention regulations and technical standard –, has passed all the prescribed tests and has any necessary markings (e.g. CE, TÜV). Declarations of conformity must be included in the delivery free of charge.

b. If FOOKE GmbH incurs costs as a result of a defective delivery, in particular costs for transport, travel, labour, or materials, or costs for an incoming goods inspection exceeding the usual scope, these costs shall be borne by the supplier.

c. If, due to defectiveness of the item delivered by the supplier, FOOKE GmbH accepts returns of products manufactured and/or sold by it, or if the purchase price is justifiably reduced by a customer of FOOKE GmbH for this reason, or if other claims are brought against us for this reason, FOOKE GmbH reserves the right to take recourse against the supplier. Furthermore, FOOKE GmbH is entitled to demand compensation from the supplier for expenses that FOOKE GmbH has had to bear in its relationship to its customer because of a claim by the latter for reimbursement of expenses incurred for the purpose of making reparation, in particular, transport, travel, labour and material costs.

d. All documentation, such as operating instructions and manual, are to be included in German and English.

e. FOOKE GmbH is entitled to take recourse against the supplier in accordance with the statutory regulations,

if there is a sale of consumer goods when selling.

f. FOOKE GmbH is not obliged to immediately examine incoming goods for defects, except for obvious or easily identifiable defects that can be discovered during normal use and with customary attention.

g. A repair shall be considered a failure after the second unsuccessful attempt, unless the nature of the item or defect, or other circumstances, indicates otherwise.

h. In the case of successive delivery contracts, FOOKE GmbH is entitled to immediate termination if there are significant defects or a series of related claims and there is no immediate solution.

i. On concluding the contract, the supplier shall offer FOOKE GmbH transfer of its warranty claims against the supplier's upstream suppliers. We can accept this transfer at any time.

10. Force majeure

Force majeure, particularly industrial action, faulty operation through no fault of our own, riots, official or statutory measures (e.g. embargo) and other unavoidable events entitle FOOKE GmbH to withdraw wholly or partially from the contract.

In this event, damage compensation or other financial claims of the supplier are excluded.

11. Quotes, brochures, data sheets, drawings, specifications, promotional materials

The supplier's performance data in its quotes, brochures, data sheets, etc. represent the guaranteed minimum properties of the delivered goods for FOOKE GmbH.

12. Third-party property rights

The supplier is liable for ensuring that the use of the delivered items does not infringe any third-party property rights or trade secrets. It is obliged to release FOOKE GmbH from any claims by third parties, and to compensate for any damage in cases of infringement.

13. Confidentiality

The supplier undertakes to treat all confidential information received either indirectly or directly from FOOKE GmbH as confidential. Orders and all associated commercial and technical details are also to be treated as confidential information. In particular, all included illustrations, drawings, calculations, quality guidelines, templates and other items are to be kept confidential. Copying or disclosure of confidential information is only authorised within the scope of operational requirements. It may only be disclosed to third parties following prior written approval by FOOKE GmbH.

GENERAL TERMS AND CONDITIONS OF PURCHASE



Independent of this, the supplier agrees to come to a separate confidentiality agreement at the request of FOOKE GmbH.

14. Final provisions

- a. The place of fulfilment and exclusive court of jurisdiction is Borken, if the supplier is a merchant who, upon conclusion of the contract, is acting in the exercise of its commercial or independent professional activity, a legal entity under public law, or a special fund under public law. The same applies if the supplier has no general place of jurisdiction in Germany, or if the domicile or habitual residence at the time of performance is not known.
- b. However, FOOKE GmbH is also entitled to claim damages at the supplier's general place of jurisdiction.
- c. German law applies, excluding the complete United Nations Convention on Contracts for the International Sale of Goods (CISG).
- d. Should one of the above provisions be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. In place of the invalid or unenforceable provision, a provision shall be deemed to have been agreed that comes as close as possible to what was legally intended by the contracting parties according to the original purpose of the invalid or unenforceable provision. The same applies to any gaps in the contract.