

# FONDIUM General Terms and Conditions of Sales

Version: December 2020

## 1. Scope

- 1.1. These General Terms and Conditions of Sale of the entities of the FONDIUM group, including but not limited to the FONDIUM Group GmbH, the FONDIUM Singen GmbH, the FONDIUM Mettmann GmbH as well as the FONDIUM B.V. & Co. KG (hereinafter referred to as "FONDIUM") shall exclusively apply to all deliveries to the Customer (hereinafter referred to as "Customer"); any contradicting or deviating terms of the Customer shall not apply, unless FONDIUM explicitly approved the applicability of these terms in written form. These terms and conditions of sale shall also apply if FONDIUM carries out the delivery to the Customer without reservation and in the knowledge that the customer's terms and conditions contradict or deviate from these terms and conditions of sale.
- 1.2. Any delivery agreement (Order and acceptance) and call-offs as well as changes and amendments require the text form. All agreements between FONDIUM and the Customer concluded for the execution of a delivery agreement, shall be agreed in the respective delivery agreement in text form.

## 2. Offers, Orders, Subcontracting

- 2.1. The Customer shall provide us in his tender or the respective order a technical specification sheet that specifies the cast parts to be produced in every respect.
- 2.2. If the order is an offer according to § 145 of the German Civil Code (BGB), FONDIUM is entitled to accept the offer within 2 weeks after receipt.
- 2.3. An offer of FONDIUM is non-binding unless it is classified as binding for a specified period of time. Furthermore, such an offer is non-binding, if the Customer makes changes to the technical conditions or prototypes provided by FONDIUM after the submission of the offer.
- 2.4. FONDIUM is entitled to assign the production of cast parts and value-added services to these parts to affiliated companies of FONDIUM, without the need for the Customer's approval. Any other subcontracting of orders to third parties requires the prior approval of the Customer which may not, however, be refused or delayed without good reason.

## 3. Cancellations, Terminations

- 3.1. The Customer is not entitled to cancel orders. If the Customer cancels an order contrary to this clause 3.1. the Customer shall compensate FONDIUM for all costs and work performed till the time of cancellation, as well as lost profit and in general all direct and indirect consequences of said cancellation, including but not limited to already ordered models, core boxes, machining tooling, investments in machining machines.  
If a cancelled order included planned binding and non-binding volumes, the extent of cancellation and compensation shall not only include bindingly ordered quantities, but also those whose production has already begun at the time of cancellation in order to be able to meet the Customer's requirements within the regular production cycle for the respective cast parts.
- 3.2. Any postponement of performance or delivery of an order requires the prior approval of FONDIUM, which FONDIUM in general only gives, if the Customer bears all costs (storage, financing, administration fees etc.) resulting from the postponement. Said costs shall be due after receipt of FONDIUM's respective invoice.
- 3.3. For parts withheld by mutual consent, the Customer shall at least pay the initially agreed price. If price increases are agreed after the originally agreed delivery date, the price conditions in force at the time of actual delivery shall apply.

## 4. Scope of delivery, dimensions, weights, responsibility for the construction

- 4.1. In case of supply contracts, in which FONDIUM undertakes to deliver according to call-offs, the binding volumes shall be submitted to FONDIUM in a call-off at least 3 months prior to the intended delivery date. If not otherwise agreed, the volumes stated by the Customer during the tender process shall be deemed to be FONDIUM's maximum delivery obligation (down to calendar weeks with 49 calendar weeks production/calendar year). Volumes exceeding this amount require a separate agreement.
- 4.2. Technical information provided by FONDIUM shall not be deemed to be guaranteed properties, but only a recommendation with regard to the realization. This information shall be deemed to be a usual approximate value in the industry, if not otherwise explicitly stated by FONDIUM.
- 4.3. If not otherwise agreed, FONDIUM produces the cast parts exclusively according to the specifications of the Customer without performing any own development or construction services. Therefore, FONDIUM is not responsible for the construction.
- 4.4. It may be explicitly agreed, that FONDIUM fully or partly participates in the construction of the cast part, under the condition, that the Customer, at any time, is in control of his product and that the Customer is still responsible for the construction and stays responsible depending on the intended use.
- 4.5. In case that FONDIUM makes suggestions that aim for an improvement of the technical performance or for a change of drawings and the customer approves these suggestions, nevertheless FONDIUM shall not be liable for any damage resulting from such a suggestion. This includes but is not limited to suggestions due to economic requirements or requirements due to the manufacturing process in foundries.
- 4.6. The principles of section 4.5. of these Terms and conditions of Sale shall also apply in any case that the business relationship includes a development. This shall not apply in case that FONDIUM agreed on FONDIUM's responsibility on a case-by-case basis in written form.
- 4.7. In case that FONDIUM developed a cast part for the Customer and FONDIUM is not nominated for serial delivery, the Customer is obliged to bear all development costs. This includes the costs for manufacturing test tools or prototypes.
- 4.8. In case that FONDIUM manufactures cast parts according to drawings, models and other specifications or details provided by the Customer, FONDIUM's liability for any infringement of intellectual property rights on whatever legal grounds shall be excluded. The Customer shall reimburse FONDIUM for any claim of third parties due to such an infringement.

## 5. Intellectual Property, Confidentiality

- 5.1. FONDIUM reserves all intellectual property rights and copyrights to illustrations, drawings, calculations, models, moulds, samples and other documents. This shall include, but is not limited to those written documents, which are marked as „confidential“. Any disclosure of these documents by the Customer to any third party requires FONDIUM's expressed written approval.
- 5.2. The same shall apply to studies that FONDIUM suggests in order to improve quality or costs of cast parts due to changes of the original technical conditions. If the Customer accepts these, the Customer conclude an agreement on the conditions of use within the project with FONDIUM.
- 5.3. In case that intellectual property of FONDIUM is integrated in production tooling paid by the Customer, the price shall not include the value of the intellectual property of FONDIUM. Any transfer

of ownership of the production tooling does not include a transfer of ownership of the intellectual property integrated in the production tooling.

- 5.4. The same shall apply to changes to tooling provided by FONDIUM to the Customer in order to ensure the correct production of cast parts
- 5.5. FONDIUM and the Customer are obliged to treat all commercial and technical information disclosed by FONDIUM or the Customer during the business relationship that are not known to the public as business secret. Any sub suppliers shall be obliged to confidentiality accordingly.

## 6. Prototypes and production equipment

- 6.1. For production or serial production orders, the Customer shall order the manufacture and delivery of prototypes in advance, which FONDIUM shall make available to the Customer for acceptance at his discretion after carrying out all necessary checks and tests. The Customer shall notify FONDIUM of the acceptance in text form. As far as castings are delivered by FONDIUM to the Customer during serial production, which correspond to the accepted prototypes in form, material and manufacturing quality, these shall not be deemed defective.
- 6.2. The costs for prototypes and production equipment (special metal-cutting machines, tooling, moulds, core boxes, models, templates etc.) shall be invoiced to the Customer separately, if not otherwise agreed. This shall also apply to production equipment, which has to be replaced due to wear and tear resulting from the nomination.
- 6.3. FONDIUM only bears the costs for maintenance and appropriate storing of production equipment and costs for replacement of destroyed production equipment within the agreed production volumes.
- 6.4. Order-specific production equipment shall remain in FONDIUM's possession, even if it is paid by the Customer or is property of the Customer and is provided to FONDIUM, at least till the lawfully end of the delivery contract. After this, the Customer is entitled to ask for return of production equipment, that is property of the Customer, provided however that the Customer paid all outstanding invoices in connection with the business relationship, including, but not limited to such for studies, patents and knowhow according to section 5.3. of this Terms of sale.
- 6.5. FONDIUM shall store the production equipment free of charge for a period of one year after the last delivery to the Customer or till the agreed EOP is reached or until the spare part delivery period expires (whichever date comes later). After this time FONDIUM is entitled to send a request in text form to the Customer regarding the further use of the production equipment within 6 weeks. FONDIUM's storing obligation ends, if within these 6 weeks FONDIUM does not receive an answer or no new orders are placed. As soon as FONDIUM's storing obligations for production equipment ends, FONDIUM is entitled to either scrap the tooling at the expense of the Customer. If the Customer contradicts to scrapping, the production equipment shall be sent to the Customer at his expense. In case that the Customer requests further storing at FONDIUM's site, the further storing shall be invoiced to the Customer.

## 7. Cast-in inserts and supplier parts

- 7.1. Cast-in inserts and other add-on/bought-in parts (hereinafter referred to as "Supplier parts") delivered by the Customer shall be sole responsibility of the Customer and shall be in perfect condition, that means accurate to size and ready for casting. Costs for rework due to defective or unsuitable Supplier parts shall be borne by the Customer. If not otherwise agreed, Customer shall provide FONDIUM the Supplier parts free of charge and free of shipping costs in sufficient quantity, including normal manufacturing risks (that means in general 110% of the quantity of ordered cast parts). If FONDIUM receives Supplier parts of a third party nominated by the Customer, FONDIUM shall not be responsible for the quality of the Supplier parts and the delivery ability of the third party.

## 8. Prices, Payment terms, commercial credit insurance

- 8.1. If not otherwise stated in the order confirmation, the agreed prices shall be understood "ex works" (ExW, Incoterms 2010), excluding packaging, freight and insurance; these are invoiced separately.
- 8.2. The agreed prices shall not include the applicable value added taxes; The VAT shall be invoiced separately at the statutory rate on the day of invoicing.
- 8.3. FONDIUM is entitled to claim for adaption of the prices if
  - a) the ordered cast part shall be changed
  - b) the agreed EOP is reached, at the end of serial production or if the Customer has not ordered cast parts of one type for one year.
The further rights of FONDIUM to claim price adaptions according to section 8.4. and 8.5. shall remain unaffected by this stipulation.
- 8.4. Prices for long term agreements with a duration exceeding 12 month shall be adapted according to a suitable formula taking in account the changes in material costs, costs for energy, labour costs, freight and logistics cost and/or additional costs in connection with the long term agreement, that appear between the date of the order and the agreed delivery (hereinafter referred to as "Surcharges"). In case of changes in cost factors not covered by the Surcharges, FONDIUM is entitled to request a reasonable adaption of the prices taking in account the cost factors.
- 8.5. In case that the Customer provides estimated annual volumes in long term agreements with a duration exceeding 12 months, which shall be supplied in batches according to call-offs, FONDIUM is entitled to request an adaption of the price, if it is foreseeable that the actual volume supplied during the year will be undercut or exceeded by at least 15%. Reference base shall be the offer of FONDIUM.
- 8.6. If not otherwise agreed, the purchase price is due for payment within 30 days net without deduction from the date of invoice.
- 8.7. In case that the Customer does not pay the invoice within the agreed time period, the Customer is in default of payment. If the Customer is in default of payment, FONDIUM is entitled to make due all other receivables of the Customer.
- 8.8. In case that the Customer is in default of payment, FONDIUM is entitled to perform deliveries during the default of payment only against payment in advance. In case that the default of payment exceeds 10 working days from the due date, FONDIUM is entitled to insist on payment in advance for further deliveries even though the overdue invoice is paid.
- 8.9. FONDIUM retains all further statutory rights and claims in case of default of payment of the Customer.
- 8.10. In case that a commercial credit insurance exists for receivables from deliveries and services to the Customer, deliveries shall be made in accordance with the agreed payment terms exclusively within the insured limits. In case that the Customer requires deliveries exceeding the insured limits, FONDIUM is entitled to request payment in advance to perform the delivery. The same shall apply if the insurance coverage for receivables of the Customer decreases through no fault of FONDIUM or if FONDIUM's commercial credit insurance does not insure receivables of the Customer anymore.
- 8.11. In case that the Customer requests, that deliveries of FONDIUM shall be made to a third party

(hereinafter referred to as "Nominated Recipient") and that these deliveries shall be paid by the Nominated Recipient, the Nominated Recipient shall only pay the invoices in lieu of the Customer. If the Nominated Recipient does not fulfil its payment obligations, becomes bankrupt or insolvent, the Customer is obliged to pay the outstanding invoices of the Nominated Recipient. Same shall apply if payments made by the Nominated Recipient are contested in the course of insolvency proceedings.

- 8.12. The customer is only entitled to offsetting rights if his counterclaims have been legally established, are undisputed or have been approved by FONDIUM. In addition, the Customer shall only be entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.
- 8.13. FONDIUM is entitled to assign receivables towards the Customer at any time, including, but not limited for the purpose of factoring.

## 9. Delivery time and default

- 9.1. The begin of the delivery time stated by FONDIUM requires the prior clarification of all technical issues. Time schedules shall only be binding if they are expressly agreed as binding.
- 9.2. In case of a default in delivery FONDIUM liable as part of a lump-sum compensation in the height of 3% per completed week, but maximum 15% of the respective delivery value. Any further liability of FONDIUM for damages due to default of delivery shall be excluded. FONDIUM retains the right to prove that the Customer suffered a lower or no damage.
- 9.3. In case that FONDIUM provides ordered parts to the Customer at the agreed delivery time and the Customer does not accept the parts or refuses acceptance without reason or if the Customer states that the parts will not be accepted prior to the delivery for reasons not attributable to FONDIUM, the Customer shall be in default of acceptance. In addition to FONDIUM's statutory rights in case of default of acceptance FONDIUM shall be entitled to transport back the parts to FONDIUM at the expense and risk of the Customer and to store the parts at the expense of the Customer. A renewed delivery shall be made at the expense of the Customer irrespective of the agreed Incoterms®.

## 10. Force Majeure

- 10.1. Acts of god (Force majeure), that means including, but not limited to natural disasters, fire, flood, strikes, riots, governmental measures, pandemics and other unforeseeable, unavoidable and serious events release FONDIUM from its obligations to perform for the duration of the event and to the extent of its effect. This shall also apply if these events occur at a time when FONDIUM is already in default of performance. FONDIUM undertakes to provide the Customer without undue delay the necessary information, if possible and within the limits of reasonableness and to adapt the obligations of the Customer according the changed circumstances in good faith.

## 11. Transfer of perils– packaging costs

- 11.1. The risk of accidental loss of the cast parts shall be transferred to the Customer upon leaving the plant. This shall also apply if FONDIUM has taken over the shipment.
- 11.2. For the return of packaging separate agreements shall be concluded.
- 11.3. If requested by the Customer, FONDIUM will conclude a transportation insurance for the delivery. The resulting costs shall be borne by the Customer.

## 12. Warranty

- 12.1. Warranty claims of the Customer presuppose that the Customer properly fulfilled its obligations of inspection and complaint according to § 377 of the German Commercial Code (HGB). In case that FONDIUM supplies raw cast parts, the Customer is not released from its obligation to steer raw cast parts with defects only visible after machining according to IATF 16949:2016, even if the statutory required incoming inspection is limited.
- 12.2. In case of delivery of defective cast parts prior to the production (machining or installation) FONDIUM shall have the opportunity to sort out, as well as to rework or replace the defective cast parts, unless it is unreasonable for the Customer. In urgent cases or if FONDIUM does not comply with the request without undue delay, the Customer is entitled to rework the parts himself or let a third party rework the parts. Reasonable (additional) costs resulting therefrom shall be borne by FONDIUM.
- 12.3. FONDIUM's liability for defects is stipulated in section 13.
- 12.4. The limitation period for warranty claims shall be 12 months from the transfer of perils.
- 12.5. The limitation period in case of a delivery recourse according to §§ 478, 479 of the German Civil Code (BGB) remains unaffected. The limitation period is five years from the delivery of the defective good.

## 13. Liability

- 13.1. FONDIUM's liability towards the Customer shall be limited to gross negligence and intent.
- 13.2. Furthermore, FONDIUM is liable according to statutory provisions, if FONDIUM culpably infringes on an essential contractual obligation. An essential contractual obligation is given, if the breach of duty refers to an obligation on whose fulfilment the customer has trusted and was allowed to trust.
- 13.3. FONDIUM's liability due to culpable damage to life, body or health remains unaffected. This shall also apply for mandatory liability according to the Product Liability Act.
- 13.4. In case that FONDIUM is obliged to pay compensation to the Customer according to these Terms and conditions of Sale, FONDIUM's liability shall be limited to the typical damage foreseeable at the time of contract conclusion. FONDIUM's liability for indirect damages, including, but not limited to damages due to line stoppage or loss of profit shall be excluded in any case that is not based on intent.
- 13.5. Any further liability for damage compensation, that is not stated in § 12- regardless of the legal nature of the asserted claim- is excluded. This shall include, but is not limited to claims for compensation due to fault at the time of contract conclusion, due to other breach of duties or due to tort claims for compensation of material damage according to § 823 of the German Civil Code (BGB)
- 13.6. The limitations according to section 13 of these Terms and conditions of Sale shall also apply if the Customer, instead of claiming for damage compensation instead of performance, claims for reimbursement of useless expenses.
- 13.7. If FONDIUM's liability towards the Customer is excluded or limited, this shall also apply to the personal liability of FONDIUM's employees, workers, staff, representatives and subcontractors.

## 14. Retention of title

- 14.1. FONDIUM reserves title to all cast parts supplied by FONDIUM until all claims arising from the business relationship have been paid in full; in this context, all deliveries shall be deemed to be one continuous supply transaction. In the case of a current account, the retained title shall also serve as security for the balance claim of FONDIUM.
- 14.2. The processing or restructuring of the cast parts supplied by FONDIUM performed by the Customer shall always be made in lieu of FONDIUM. If the delivered cast parts are processed, inseparably

connected or mixed with objects, that are not property of FONDIUM, FONDIUM shall gain co-ownership in the new made object in relation to the value of the delivered cast parts compared to the other objects at the time of processing or in relation to the value of the delivered cast parts compared to the other connected or mixed objects at the time of connection or mixture. In case that the cast parts are connected or mixed with other objects by Customer and the other object is the main object, the Customer undertakes to transfer co-ownership to FONDIUM as far as the main object is property of the Customer. The Customer stores FONDIUM's property or FONDIUM's co-ownership for FONDIUM.

- 14.3. In case that the Customer resells the delivered cast parts as intended, the Customer hereby assigns its claim for the sale, including all subsidiary rights, against its buyer to FONDIUM in the height of the amount invoiced by FONDIUM (including VAT) until full payment of all receivables of FONDIUM. Any further assignment of said receivables, assigned to FONDIUM by way of security, as part of a real factoring is not allowed. In case that the Customer includes the claim from a resale of the delivered cast parts in a current-account relationship existing with his buyer, the current-account claim is assigned in the amount of the approved balance; the same applies to the causal balance in case of the customer's insolvency. The assignment takes place regardless if the cast parts are resold prior or after processing. The Customer shall remain authorized to collect the claim even after the assignment. FONDIUM's authorization to collect the claim itself shall remain unaffected. FONDIUM however undertakes not to collect the claim as long as the Customer does fulfil his payment obligations from the collected revenues, is not in default of payment and furthermore that the Customer does not file an application for the opening of settlement or insolvency proceedings or that the Customer does not suspend payments. If one of the said alternatives occur, FONDIUM is entitled to request, that the Customer discloses the assigned receivables and the respective debtors, gives all necessary information, hands over the related documents and informs the debtors (third parties) about the assignment.
- 14.4. The Customer undertakes to inform FONDIUM without undue delay about seizures or other interventions of third parties, so that FONDIUM has the possibility to file a lawsuit according to § 771 of the German Code of Civil Procedure (ZPO). If the third party is not able to reimburse the judicial and extrajudicial costs of the lawsuit according to § 771 ZPO, the Customer shall be liable for the resulting costs.
- 14.5. FONDIUM undertakes to release the securities upon request of the Customer as far as the achievable value of the securities, exceeds the amount of the receivables to be secured by more than 10%; FONDIUM has the right to choose the securities to be released.

## 15. Miscellaneous

- 15.1. Place of performance shall be FONDIUM's place of business if not otherwise agreed.
- 15.2. The contract shall be governed by German law excluding the conflict of laws provisions. The UN Convention on the international sale of goods (CISG) of April, 11<sup>th</sup> 1980 shall not apply.
- 15.3. The place of venue shall be the place of business of FONDIUM. FONDIUM is also entitled to sue the Customer at his local court.
- 15.4. In case of prosecution or enforcement of rights of FONDIUM towards the Customer in a country outside of Germany, the Customer shall bear all fees, costs and expenses of FONDIUM related to a legally successful prosecution of rights of FONDIUM.