

**Terms and Conditions of Sale and Delivery****FunderMax GmbH**

Version: 2

Codierung: AV-19165

Gültig ab: **08.04.2022****Applicability of conditions:**

The following terms and conditions of delivery and payment form part of the subject matter of all current and future contracts concluded by us. Customer's conditions that differ from the conditions described herein are excluded. Conditions that differ from the conditions described herein are not binding unless agreed in writing. Deviating Customer's conditions shall also not be regarded as agreed if they are referred to in orders or other correspondence and no express notification of our non-acceptance of any one condition shall be required.

**Quotations:**

Our quotations are given without obligation and can be withdrawn at any time and with no reasons given for the withdrawal. No contract shall arise unless and until a written confirmation of the order placed is issued. The Customer shall inform us immediately and in writing of any deviation of our order confirmation from the order placed, otherwise the order confirmation shall be binding. Written acceptance of binding quotations must in every case reach us within 28 days from the date of the quotation.

**Specifications:**

Only specifications contained in our quotation are binding, any text for purchase orders, or drawings, illustrations, dimensions and technical product information which differs from our quotation is not binding unless approved in writing. Statements made in public and elsewhere but especially in quotations, price lists, catalogues, press advertisements, advertising material, articles sent on approval and samples are always subject to alteration and without obligation and shall not form part of the description of the characteristics of the product to be supplied.

**Delivery:**

Delivery periods indicated in our quotations are without obligation. In every case, delivery periods refer solely to the date of readiness to dispatch in our factories. Obstacles to delivery arising from circumstances beyond our control including possible delays in delivery on the part of our suppliers shall extend the delivery period or entitle us to withdraw from the Contract. Notwithstanding these delays we shall still be entitled to deliver the goods. The complete or partial impossibility of delivery shall give rise to no claims whatsoever against us. A delay in delivery of a maximum of fourteen days shall be considered to be on time unless expressly agreed otherwise in writing. In the event of delayed delivery the Customer is entitled to cancel the order only if the delay lasts more than fourteen days, the Customer has granted a period of grace of at least fourteen days in writing and the delay is not a result of the production of blanks or custom-made products. The Customer shall accept partial deliveries, which will be invoiced accordingly and shall be paid for irrespective of any outstanding deliveries. In the event that goods are to be accepted within a specific period the acceptance shall take place at suitable intervals during the entire acceptance period unless otherwise agreed in writing.

**Performance:**

Unless otherwise agreed the place of performance of all services and return services is the factory concerned or our management offices in A-9300 St. Veit an der Glan. Unless otherwise agreed transportation, dispatch or delivery shall be at the risk and cost of the Customer. Insurances will be taken out only on express instruction and at the Customer's cost. Unloading shall in every case be at the expense and risk of the Buyer.

**Terms of payment:**

Unless expressly agreed otherwise deliveries are payable within thirty days of the date of the invoice, net and without deduction. All payments are to be effected for us in euros net and without bank charges. If payment is not received within the agreed period interest shall be charged on the overdue amount at the customary bank debit interest rate (9,2 percentage points over the base interest rate) per month. For reminders sent on our behalf EUR 10 per reminder can be charged. In the event that we instruct a solicitor to recover a debt the Customer is obliged to reimburse the costs incurred in accordance with the fees charged.

All charges incurred shall be borne by the Buyer. Irrespective of any intended allocation by the Buyer of payments effected, these will be assigned first to costs, then to interest and lastly to capital (non-collateralized capital shares before collateralized, older capital shares before newer). In the event that

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the Customer is in delay with payment all outstanding amounts, including those not yet due, shall fall due and be immediately payable. In addition we are entitled to withdraw from all legal transactions not yet fulfilled in the event that the Customer is in delay with payment, if insolvency proceedings against the assets and property of the Customer are opened or a petition for the opening of such proceedings is rejected because the value of the Customer's assets and property is insufficient to cover the costs thereby incurred. Should we have substantiated doubts about the Customer's solvency we are entitled to demand payment also of amounts not yet due and to demand payment in advance for future deliveries and partial deliveries. Unless expressly agreed otherwise credit shall be refunded solely by way of further deliveries and we are therefore not obliged to pay credit granted in cash.

The Customer grants the revocable approval for the invoice to be sent by e-mail and as e-mail attachment in the electronic formats .pdf and .xml to the communication details (e-mail address) provided by the Customer. The Customer as the invoice recipient shall ensure that electronic invoices can be served properly and technical installations such as filter programs and firewalls are adapted accordingly. The Customer shall provide his communication details as well as any changes to these forthwith in writing. Invoices sent to the communication addresses last provided by the Customer shall be deemed received by the same.

#### **Set-off and assignment:**

Counterclaims can be used to offset amounts owing to us only if these counterclaims are legally valid having been confirmed by court decision or have been accepted by us in writing. The assignment of claims on us to third parties by the Customer is excluded.

#### **Prices:**

Unless agreed otherwise in writing prices are ex works. Only the prices stated in our order confirmation are valid. All prices are exclusive of value added tax.

Should the prices for raw materials and auxiliary materials, wages, energy costs, exchange rates or other economic circumstances affecting the prices change between the conclusion of the contract (order confirmation) and the delivery, we are entitled to adjust the prices in accordance with these changes. Price increases apply to deliveries from the time specified by Fundermax.

#### **Retention of title:**

We reserve the right of property of all goods delivered. All goods delivered remain our property until the purchase price has been paid in full. If goods delivered are modified by the Customer this modification shall be on our behalf and the goods shall not pass into ownership of the Customer. If the goods delivered are modified and incorporated with other products which are not our property to form a new product we shall acquire co-ownership of the new product in the ratio of the value of the goods delivered to the full value of the new product. Even if we have only coownership of the goods the Customer undertakes to store the retention of title goods separately from the rest of his goods as far as possible, to take good care of the goods, to insure the goods adequately against fire and theft and to provide proof of the validity of insurance policies on request. The customer assigns the claims from these insurances to us with immediate effect. Even if we have only co-ownership of the goods the Customer is entitled to resell the retention of title goods by means of legal business transactions only and under the proviso that he keeps the proceeds of a sale for cash separate from other monies and transfers these proceeds to us forthwith (if necessary in installments) and to inform the purchaser of the transfer (if necessary in installments) of the purchase price to us in the event of purchases on deferred payment terms. The Customer assigns to us with immediate effect any claims which have already arisen from the resale of retention of title goods. We accept these claims. The Customer shall keep revenue from assigned claims separate from his own monies and transfer this revenue to us forthwith when payment falls due. Should the Customer fall into arrears with payments he undertakes to inform us at the first time of asking of the identity of the purchaser of the retention of title goods and of his insurers. In case of seizure or similar measures taken against the Customer by third parties on our retention of title goods the Customer undertakes to assert the right of property and inform us forthwith of every such threat to our retention of title. In the case of delayed payment we reserve the right to take back the goods temporarily without declaring our withdrawal from the Contract. In the

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event of a justified (temporary) retrieval of the goods the Customer shall bear the costs thereby incurred.

We reserve the right to inspect retention of title goods stored by the Customer at his premises at any time and are consequently entitled to enter the Customer's factory and storerooms and to inspect his documentation and books pertaining to the retention of title goods.

**Warranty and compensation:**

The Customer shall inform us in detail and in writing of short delivery, over delivery or damage incurred during shipment immediately after receipt of the goods and shall enclose the relevant certification of the haulage/freight company. Notification in writing of any quality defects in the goods delivered by us must be made within five days of delivery and before any modification or incorporation with other products has taken place and must contain an exact description of the defects discovered. If such notification is not made within five days all claims are forfeited. It is the responsibility of the Customer to present proof of the defects. No confirmation of the suitability of the goods for particular applications will generally be given. Should the complaints about our goods prove to be justified we shall at our option repair the defects, replace the defective goods with sound goods or grant credit. Claims arising from defects lapse six months after delivery of the goods. Any additional claims, especially claims for compensation and claims possible under § 933 b ABGB (Austrian Civil Code) are excluded. The Customer waives the right to dispute due to error legal transactions conducted with us. Any compensation we pay for whatever reason shall be limited to the value of the goods for which the compensation is paid. However, claims for compensation due to non-performance of the Sale of Contract are excluded. Our liability for products not manufactured by us is limited to the extent of the guarantee given to us by the manufacturer. We work the components of our products provided by you according to your specifications. We ask for your strict adherence to the installation instructions found in the Technical Information such as fixed points, sliding points or fixing spans etc. We accept no liability for non-observance of either our Technical Information or the practices customary in the trade. During work performed according to your specifications no check whatsoever will be made to ascertain their compliance with our installation instructions and/or other applicable technical regulations. Claims for compensation arising from and in connection with work performed according to your specifications are excluded, claims on the warranty and the right to dispute or adapt the Contract due to error are also excluded. This also applies to any detrimental consequences arising from inaccuracy or lack of clarity in your specifications.

**Applicable laws and place of jurisdiction:**

All legal transactions conducted with us are governed by Austrian law (Austrian national law excluding possible reference standards and the United Nations Convention on Contracts for the International Sale of Goods). Sole place of jurisdiction for all disputes arising from or in connection with this contract shall be Klagenfurt. We reserve the right to institute court proceedings against the Customer at his competent court of law.

**Miscellaneous:**

In the event that a provision of these Terms of Delivery and Payment becomes or is rendered void for whatever reason this shall not affect the effectiveness of all other provisions contained herein. The provision that becomes or is rendered void shall be replaced by customary trade practice. Our failure to assert any or all of the rights granted to us herein shall not be considered a waiver of these rights.