

**Terms and Conditions of Fidlock GmbH Purchasing and Delivery Contracts with Wholesale and Retail Companies Regarding Products for Distribution to the End-consumer**

**(General Terms and Conditions for Consumer Products)**

**1. General**

1.1 The following conditions apply to all contracts with companies at every level of retail and wholesale trade in products for distribution to the end-consumer.

The subject of these contracts is the supply of products constituting a combination of fasteners and coupling elements with all types of consumer goods, or else the spare and replacement parts for these products.

1.2 By placing the order, the customer hereby declares that they agree to these conditions. All deliveries and services shall be rendered exclusively on the basis of these Terms and Conditions, unless otherwise expressly agreed in writing. Any conflicting conditions of the customer are herewith explicitly rejected.

1.3 These Terms and Conditions also apply to all future transactions, even without repeated incorporation.

1.4 Fidlock is entitled at any time to amend or supplement these Terms and Conditions, price lists and performance descriptions. The customer shall be notified of any changes by post or e-mail. If the customer fails to object in writing within six weeks of receiving notice of an amendment, the changes shall be deemed to be approved and will also be effective for existing contractual conditions.

1.5 Other Terms and Conditions of the customer are only binding if agreed in writing. References made by customers to their own conditions are hereby expressly rejected. Verbal commitments and agreements are only binding upon written confirmation.

1.6 When using Incoterms, the 2010 version shall apply.

1.7 Customers may only assign claims from the purchasing contract with the prior written consent of Fidlock GmbH (hereinafter referred to as "Fidlock").

**2. Orders**

2.1 Any offers from Fidlock constitute a non-binding invitation to conclude a contract. A purchasing contract shall only be deemed to be concluded, when Fidlock accepts the customer order through written confirmation, accepts the execution of the order, or performs fulfilment activities.

2.2 Fidlock is only bound by offers made in writing. Unless a different term is indicated in the offer, offers made by Fidlock are valid for 14 days following the date of issue.

2.3 Any dates indicated in offers and confirmation of offers, including foreseeable delivery dates, shall only be valid in accordance with the obligations to cooperate that have been individually agreed with the customer; in particular, but not exclusively, on receipt of the agreed payment of sums in advance. The obligation to cooperate shall also apply to third-party services, called upon by the customer to fulfil the obligations or deployed in agreement with a customer of Fidlock to render additional services. Any delays or amended requirements for products or contractual terms, which are the responsibility of the customer, shall cancel the dates indicated.

2.4 Fidlock is entitled to rescind the contract without compensating the customer, if the fulfilment of the contract becomes impossible for Fidlock due to *force majeure*. Other legal grounds for rescission hereby remain unaffected.

2.5 The right to rescind the contract due to the deterioration of Fidlock's assets after concluding the contract is excluded.

2.6 Fidlock is entitled to rescind the contract without any liability for damages if a negative credit assessment is received, or if there is a substantial deterioration in the customer's financial situation; especially if the customer's assets are seized, other foreclosure measures are implemented, or insolvency proceedings are opened.

### **3. Product Specifications, Quality and Samples**

3.1 The scope of Fidlock's individual performance shall be determined by the respective product documentation, order confirmation and the present contractual terms and conditions.

3.2 The agreed product specifications shall be exclusively those described in the product documentation and order confirmation issued by Fidlock. Images and written informations in catalogues and websites, or else advertisements, merely serve to provide general information and publicity purposes, and do not represent any guarantee of specific properties.

3.3 The agreed product specifications apply only to the by Fidlock supplied and documented configuration of a product.

3.4 For mandatory legal reasons, in the event of any changes to national or international standards, or for technical reasons, Fidlock reserves the right to make changes to the products. However, a right to information and/or withdrawal only exists, if these amendments did not need to be made on the basis of mandatory statutory provisions to avoid risk to the consumer and insofar as there is no impairment to the usability or saleability of the modified products.

3.5 The customer shall ensure that they do not guarantee or advertise any applications or properties, other than those described by Fidlock in the product documentation.

3.6 Fidlock products contain magnets. It is the responsibility of the customer to ensure that any obligation to inform and provide clarification for the end- or downstream-consumer is also met, which may be required under the applicable regulations..

3.7 Superficial properties, such as colour and surface quality, especially flow marks, streaks, absence of burr and, if applicable, printing, shall be provided "as sampled". Deviations within technically unavoidable and/or standard tolerance shall not be regarded as a defect, unless otherwise explicitly agreed.

### **4. Prices and Conditions**

4.1 The conditions and price lists applicable at the time of the order shall be decisive. Previous prices are rendered invalid with the introduction of a new price list. Purchasing contracts that have already been concluded shall remain unaffected by the introduction of a new price list.

4.2 Selling prices are only valid as fixed prices, if confirmed by Fidlock in writing. Unless otherwise agreed in writing, Fidlock's prices shall be valid ex warehouse in Germany plus VAT at the respective current rate.

4.3 If any of Fidlock's costs, which cannot be influenced – such as the price of raw materials - after conclusion of the contract increase by more than 10%, Fidlock may increase prices on the delivery date for deliveries due for payment later than four months after the conclusion of the contract. The same applies to fluctuations in exchange rates between the Euro, US dollar and Chinese renminbi.

4.4 The deduction of cash discounts shall only be permitted following prior written agreement.

### **5. Delivery, Dispatch, Transport Risk and Risk Transfer**

5.1 Unless otherwise agreed, delivery shall be made by the provision and approval for collection of the sales warehouse in Germany.

5.2 Transportation and similar packaging will not be taken back; customers must provide for the disposal of the packaging at their own expense.

5.3 Where Fidlock supplies packaging materials or packaging units at the request of the customer, which do not correspond to Fidlock's standard packaging, Fidlock is hereby entitled to bill for the resulting additional costs.

5.4 Delivery dates shall only be considered as definite for fixed purchases, if Fidlock has expressly confirmed them as such.

5.5 The failure of Fidlock to comply with delivery dates and deadlines only entitles the customer to assert rights, if the customer has set an appropriate deadline of at least 15 working days, unless this is legally dispensable.

5.6 If Fidlock is prevented from fulfilling its obligations by unforeseen circumstances, which could not be avoided despite reasonable diligence, the delivery period shall be extended by the duration of the hindrance. This shall also apply in the case of industrial disputes, disruptions to in-house operating procedures, and disruptions to the operating procedures of subcontractors (insofar as alternative procurement cannot be expected), including transport companies, interference from public measures and disturbances to traffic routes.

5.7 Fidlock shall be entitled to make partial deliveries, provided that this does not unduly disadvantage the customer.

5.8 If the customer fails to accept the goods, partial deliveries or deliveries, even after an appropriate deadline has been set, Fidlock shall be entitled to charge 20% of the order amount as a lump sum. The customer is free to prove that no damage or a lesser damage has occurred.

5.9 If the customer is in default of acceptance or culpably breaches an obligation to cooperate, Fidlock shall be entitled to demand compensation for the resulting damages, including any additional expenses. The right to make further claims remains reserved. If the above-mentioned conditions are met, the risk of accidental loss or deterioration of the purchased goods is transferred to the customer at the point in time, when it fell into default of acceptance or debtor's default.

5.10 Fidlock shall only be liable for damages resulting from delivery delays unintentionally caused by it without gross negligence, within the scope of flat-rate compensation for the delay of each completed week in arrears, amounting to 3% of the delivery value but not exceeding 12% of the delivery value.

5.11 Other legal claims and rights of the customer due to delayed delivery shall remain unaffected.

5.12 Fidlock is entitled to claim corresponding damages due to the customer's failure to fulfil the delivery contract.

## **6. Payment**

6.1 Unless otherwise agreed, a separate invoice shall be issued for each delivery under the date of dispatch. This also applies to partial deliveries. Any advance payments made shall be accounted for in the individual partial deliveries and on a pro rata basis.

6.2 The amount due shall be payable net within 10 days of the invoice date, insofar as no other payment date is indicated in the order confirmation. A prepayment of at least 50% of the order value has been agreed for first orders.

6.3 The deduction of cash discounts is only permitted with prior written agreement.

6.4 In the case of a justified complaint over defective goods, the customer may only provisionally withhold that portion of the purchase price, which corresponds to the invoiced amount of the defective part of the delivery.

6.5 In the case of late payment, outstanding default interest, rejection of cheques or bills of exchange, or any other significant deterioration of the customer's assets following the conclusion of the contract, Fidlock shall be justified in making further deliveries only against prepayment, immediately requesting payment of all outstanding amounts, and demanding cash payment on return of a bill of exchange or security provided.

6.6 Customers shall be considered to be in default, if the agreed payment dates are exceeded, even without a reminder being required. In the event of payment default, Fidlock shall be entitled to charge default interest at the rate calculated by a German credit institute for current bank overdrafts, but at a minimum rate of 9% over the respective base rate of the European Central Bank.

6.7 Fidlock shall charge a fee of EUR 5.00 for the second, and respectively for each additional reminder. The costs for any legal proceedings shall be borne by the customer.

6.8 It shall only be permitted to offset counterclaims in the case of undisputed or legally established claims. Customers are only entitled to exercise a right of retention, if the counterclaim is based on the same contractual relationship.

6.9 Payment of the purchase price shall be made exclusively by transfer into the account indicated in the invoice issued by Fidlock.

6.10 Objections to invoices from Fidlock must be made in writing to Fidlock. Invoices shall be deemed to be approved by the customer, if the customer does not object to them within two weeks of their receipt. The punctual transmission of the objection is sufficient for meeting the deadline. The customer's statutory claims in the case of objections lodged after the deadline shall remain unaffected by this regulation.

## **7. Warranty, Defect Liability**

7.1 The contractual nature of the goods is governed exclusively by the information in the product documentation, the order confirmation and the present conditions issued by Fidlock. The contractual nature of the goods is subject to both customary and minor deviations that cannot technically be avoided, wear and tear due to the nature of the goods, deviations from properties (shape or colour) described in the brochures or similar promotional material, or in the offers, insofar as these are derived from the natural irregularity of the materials used. These shall not be deemed to be defects.

7.2 Claims for defects shall not be justified by deviations from the agreed specifications, assured properties, or damages after the transfer of the risks due to faulty or negligent handling or storage, excessive use, unsuitable operating equipment, or due to external influences, which are not regulated under the contract. Repair work or alterations require the explicit approval by Fidlock.

7.3 The customer warranty and guarantee rights provide that the customer has properly complied with the obligation to examine and complain. Customers are obliged to examine and accept incoming goods with due diligence. Inspection for obvious defects must take place within three working days following receipt of the goods at their destination. Any damage originating from the failure to do so will be borne by the customer.

7.4 If a product release was agreed before the delivery of the goods or the initial inspection of the sample, complaints about material defects, which the customer could have ascertained with careful inspection of the release or initial sample, shall be excluded.

7.5 Within three working days following receipt of the goods at their destination, the customer must present a written complaint about any hidden deficiencies or incomplete deliveries within three working days of detecting the defect.

7.6 In the event of any changes made to the goods, there shall be no liability for material defects.

7.7 If the goods are found to be defective at the time of transferring risk, Fidlock may, within the scope of a subsequent performance claim, rectify this or replace the goods at its own discretion, within 10 days of the goods being returned.

7.8 If Fidlock fails to meet these obligations, or fails to comply with the contractual conditions within a reasonable period, the customer may give final reasonable written notice of 14 days for Fidlock to comply. Should this period expire without result, the customer may request a reduction in the price or rescind the contract, at his discretion.

7.9 Claims for damages made by customers due to defective goods are limited to foreseeable and unavoidable damages. The customer is obliged to minimise any possible damage by timely inspection of the goods at the earliest possible opportunity.

7.10 Customers' warranty claims, if the customer is a company, shall expire in 12 months, otherwise according to the statutory provisions. The statute of limitations shall be suspended for the duration of the remediation or subsequent delivery, as from the date of returning the defective goods.

7.11 If a complaint is unfounded, the customer shall reimburse Fidlock for all expenses arising from handling the complaint.

7.12 Customers may not resell defective goods to consumers, prior to final inspection by Fidlock and approved release for sale to consumers.

7.13 Fidlock shall be given the opportunity to determine the defect. Rejected goods must be returned to Fidlock immediately on request; Fidlock shall accept the transportation costs, if the complaint is justified. Customers who fail to comply with these obligations, or who make changes to already rejected goods without Fidlock's consent, shall lose any claims for material defects.

7.14 Customer recourse claims against Fidlock shall only be accepted insofar as the customer has not entered into any agreements with their own clients beyond the legally binding claims for defects.

## **8. Retention of Title**

8.1 The delivered goods remain the property of Fidlock until complete payment of the purchase price and any additional costs.

8.2 Fidlock shall retain ownership of the goods with regard to other merchants until all claims resulting from the commercial relationship are settled (extended retention).

8.3 The retention of title shall terminate in the case of exceptional payment by bill of exchange, only after this has been cashed by the drawee.

8.4 In the event that Fidlock rescinds the contract (in particular, due to default of payment on the part of the customer), Fidlock shall be entitled to withdraw the reserved goods. In order to exercise this right, Fidlock is entitled to enter the customer's business premises during normal business hours. The contract shall be deemed to be explicitly rescinded, if Fidlock demands the return of the goods delivered under retention of title.

8.5 Customers may not mortgage or pledge the reserved goods as security. They shall immediately inform Fidlock in writing, if third parties wish to seize the reserved goods. In this case, they shall provide Fidlock with all the necessary documents to protect Fidlock's proprietary rights; especially a copy of the seizure report. The customer shall be liable to Fidlock for all damages arising from such seizure by third parties, in particular for all the legal and extrajudicial costs of enforcement actions, insofar as the third party cannot compensate these costs.

8.6 The customer shall store and manage the sold goods separately and in an identifiable form with the due diligence of a prudent businessman and shall insure them against damage from fire, water and hail. The customer hereby assigns any related insurance claims to Fidlock. Fidlock hereby accepts the assignment.

8.7 Customers may resell reserved goods, unless they are in default of payment. In the case of resold goods, they shall assign all claims (including VAT) arising as a result of the contractual relationship with their clients or third parties, to Fidlock. Fidlock hereby accepts the assignment.

8.8 Customers may combine or process the reserved goods with their own or third-party goods, as part of normal business transactions, unless they are in default of payment. On combining or processing, Fidlock shall acquire co-ownership of the new product, corresponding to the proportionate value of the conditional commodity and the related or newly-manufactured product. In the event of selling related or newly-manufactured goods, customers shall assign the claims arising from the contractual relationship with their own client or a third party to Fidlock, proportionate to the co-ownership. Fidlock hereby accepts the assignment.

8.9 The customer retains a fiduciary right to collect the assigned claims (collection authority). Fidlock's authorisation to collect shall remain unaffected. However, Fidlock shall not make use of this authorisation to collect, providing it is not revoked. In the event of the expiry of the authorisation to collect, the customer shall be obliged to immediately notify the assignment to its own clients and to provide Fidlock with the information necessary for collection, as well as documentation. If the customer becomes insolvent, Fidlock shall have the right, according to the insolvency regulations, to segregate the goods or obtain a substitute segregation. The reserved goods shall be made immediately available to Fidlock within the period of one week and shall not be sold without Fidlock's consent. In the event of utilising the reserved goods, Fidlock shall deduct the costs and interest arising from the proceeds of the sale and shall offset these costs with the purchase price. The surplus shall be paid to the customer. This shall equally apply to claims made by Fidlock.

8.10 The right of the customer to resell or use reserved goods and the authorisation to collect shall terminate with suspension of payments, enforcement measures on the reserved goods or their surrogates or the application for or the opening of insolvency proceedings, or objections over cheques or bills of exchange.

8.11 Insofar as the value of the collateral exceeds the total value of open claims to be paid by the customer by more than 20%, Fidlock shall release the exceeding collateral at the request of the customer.

8.12 The customer shall treat the reserved goods with due diligence. If maintenance and inspection work needs to be undertaken, the customer must perform this promptly at their own expense.

## 9. Limitation of Liability

The following limitations to liability apply to liabilities arising from any contractual or non-contractual legal grounds, including warranties and guarantees. The statutory provisions for burden of proof hereby remain unaffected.

9.1 For simple negligent damage caused by faulty products, the seller's liability is limited to the scope and amount of product liability insurance. This limitation to liability shall not apply in the case of intent or gross negligence, due to culpable injury to life, the body or health, or due to malicious concealment of a defect. In the case of substantial breaches of contract, foreseeable and contractual damages are covered by the maximum amount of the product liability insurance.

9.2 Where faulty products result in a callback, the liability for the costs arising from the callback shall be limited to the scope and amount of cover of Fidlock's product recall insurance. In addition, such costs shall be reimbursed only insofar as Fidlock has been informed of the recall and has been given the opportunity to cooperate within a reasonable period of time.

9.3 Significant contractual obligations are obligations, the fulfilment of which is a prerequisite for the proper performance of the contract and on compliance with which the contractual partner may regularly rely.

9.4 In the case of contractual infringement other than product defects, Fidlock shall not be liable for simple negligence, except in the case of injury to life, the body or health, or due to the violation of essential contractual obligations.

9.5 In the event of default, Fidlock's liability shall be limited to 0.5% of the order value per week, but this shall not exceed 10%. Furthermore, compensation claims will be limited to the reimbursement of proven additional costs (purchase coverage based on three comparative offers).

9.6 Fidlock shall not be liable for breaches of contract or damage caused by *force majeure*. The contracting parties especially acknowledge the following as *force majeure*: traffic disruptions, official measures, adverse weather events, unavailability of raw materials, industrial disputes as strikes or lockouts, disruptions to the company's own operating process, disruptions to the operating processes of carriers and suppliers (insofar as alternative procurement cannot be expected).

9.7 Claims lodged by commercial customers will lapse within the term of one year. This limitation period does not apply to damages caused by gross or intentional negligence on the part of Fidlock, or in the event of injury to life, the body or health.

9.8 Fidlock shall not be liable for defects resulting from unsuitable or improper use, faulty assembly by the customer or third parties, or for the consequences of improper modifications or repair work carried out by the customer or third parties, without Fidlock's express written consent. The same shall apply to substantial defects that only insignificantly reduce the value or suitability of the goods.

9.9 Fidlock shall not be liable for damage caused by the customer, or which the customer could have prevented by observing its contractual obligations to cooperate or assume responsibility, in particular by providing sufficient information to the consumer and adopting reasonable safety measures. In the case of doubt, the customer shall furnish proof of the fulfilment of these obligations.

9.10 Fidlock shall not assume any liability for national or international embargoes and/or sanctions - e.g. fulfilment bans.

9.11 As far as permitted by law, Fidlock's liability is limited to the value of the goods supplied by Fidlock.

9.12 Insofar as Fidlock's liability is excluded or restricted, this also applies to the personal liability of Fidlock's employees, workers, staff, legal representatives and vicarious agents.

## 10. Product Defects and Recall

10.1 The contracting parties shall, as far as is possible and reasonable, inform each other in advance about the content and scope of possible recall measures and shall give each other the opportunity to comment.

10.2 Fidlock is only liable for the recall of products if the recall is caused or agreed by Fidlock, or for legal reasons by the competent authorities to prevent health risks.

10.3 Section 9 para. 2 hereby remain unaffected.

### **11. Design Protection, Intellectual Property Protection**

11.1 The Ordering Party obligates itself not to copy items from the delivery program of Fidlock or allow them to be copied and distributed.

11.2 In case of violation Fidlock is entitled to a contract penalty. The amount of the claim for each copied article shall be 100% of the price for the corresponding article of Fidlock plus costs and attorneys fees. Fidlock's pricelist in effect at the time of the violation shall be the controlling measure. The right of Fidlock to compensatory damages remains undisturbed.

### **12. Ancillary Clauses**

12.1 There is a writing requirement for contracts and future amendments and supplements.

12.2 Legally relevant declarations and notifications from the Ordering Party to Fidlock or involving a third party must be made in writing.

12.3 This contract fully contains all the agreements of the contracting parties. There are currently no ancillary agreements to the contract.

12.4 The headings are for convenience only and not the final determination of the related text.

12.5 The non-assertion of rights by Fidlock does not constitute a waiver of such rights.

### **13. Jurisdiction**

13.1 The exclusive place of jurisdiction for all disputes is Hanover.

13.2 Fidlock is entitled to file an action against the Ordering Party in its home country or at any place where he has property or assets.

### **14. Foreign Transactions**

For transactions with customers whose registered office is located outside the Federal Republic of Germany, the following additional conditions shall apply:

14.1 All transactions, including bills of exchange and check transactions, are governed by German civil and commercial law including UN sales law (United Nations Convention on Contracts for the International Sale of Goods).

14.2 If the contract is drawn up in several languages, the German version shall prevail.

14.3 The Gregorian calendar shall apply for contractual purposes among the Parties.

14.4 The local time at the place of business of Fidlock in compliance with the summer and winter time shall apply.

14.5 Unless otherwise agreed, payment shall be in euros (EUR). Changes in currency exchange rates leave the purchase price and other payment obligations specified in the contract unaffected.

14.6 Customs duties, fees, levies and any taxes arising from the execution of the purchasing contracts and deliveries shall be borne by the customer.

### **15. Ineffectiveness, Contractual Loopholes**

15.1 Should present or future provisions of this contract be entirely or partly invalid or unenforceable or later lose their validity or enforceability, the validity of the remaining provisions of the contract shall not be disturbed. The same applies if this contract should have gaps.

15.2 In place of an invalid or ineffective provision or to fill a gap, that appropriate clause will apply that the parties would have used had they considered the point when concluding the contract. This also applies when the invalidity of a provision rests on a denominated measure of performance or time (period of time or due date); in such cases that legally permissible measure of performance or time (period of time or due date) that comes closest to that intended shall replace that in the contract.

15.3 Should the validity of a provision in the above-described sense be attainable only by way of agreement under adhesion to particular requirements of form, the parties are obligated to do the required acts and give the required declarations.

### **16. EU Tax Legislation**

Deliveries within the European Union shall be made by Fidlock exclusive of German sales tax, on presentation of a valid VAT ID number. Customers shall undertake to cooperate in the procurement of any further proof required by the German tax authorities, within the scope of their area of responsibility. If they fail to do so after a reasonable deadline is set, or if the VAT ID number indicated is invalid, Fidlock is entitled to retroactively impose German sales tax and reasonable expenses.

Hanover, January 2017