

## **General Terms and Conditions (GTC) of FORTÉ Germany GmbH for Purchasing, Planning and Installation Projects**

### **§ 1 Scope of application**

1. These General Terms and Conditions (GTC) apply to all purchase, planning and installation orders of FORTÉ Germany GmbH (hereinafter referred to as "FORTÉ Germany") with companies within the meaning of § 14 BGB (German Civil Code) (hereinafter referred to as "customer").
2. Deviating or conflicting conditions of the customer are not recognised unless FORTÉ Germany expressly agrees to their validity in text form. The GTC of FORTÉ Germany also apply if services are provided in the knowledge of conflicting or deviating conditions of the customer.
3. These GTC also apply to all future transactions with the customer without the need for a new express agreement.

### **§ 2 Conclusion of contract and collateral agreements**

1. Offers from FORTÉ Germany are non-binding, unless expressly labelled as binding. A contract is only concluded by acceptance of a binding offer submitted in writing or in text form by the customer or by written confirmation of the order by FORTÉ Germany.
2. The components of the contract result from the following order. This sequence also regulates the order of precedence of the contract components in the event of contradictions:
  - a) Order confirmation,
  - b) these GTC,
  - c) service description,
  - d) harmonised planning documents,
  - e) the VOB Part B in the version applicable at the time of conclusion of the contract
  - f) BGB.
3. FORTÉ Germany will implement any changes requested by the customer after conclusion of the contract, insofar as its business is equipped for the change requests and the customer expressly agrees to any price adjustments and postponements in text form.
4. Upon conclusion of the contract, the parties mutually appoint representatives who are authorised to make binding declarations of intent for certain areas for the respective party.



## § 3 Prices and terms of payment

1. Unless otherwise agreed, the price of the last offer submitted shall apply.
2. Prices for equipment and installation materials are net, i.e. ex works, excluding packaging, delivery, assembly and VAT, customs duties or other public charges. The costs of packaging, delivery (including any necessary additional expenses for transport within the building or into the building) and VAT shall be invoiced separately.
3. For hourly labour, the prices according to the offer apply, unless other agreements have been made. The customer shall nominate to FORTÉ Germany persons, including representatives for them, who are authorised to receive and approve the hourly wage slips. The handover can be done by mail delivery.
4. Unless a fixed price agreement has been made, reasonable price changes due to changes in labour, material and distribution costs for deliveries made 4 months or later after conclusion of the contract are reserved. Price increases caused by manufacturers or customs duties can be passed on to the customer at any time with corresponding proof by FORTÉ Germany.
5. Payment is to be made exclusively to one of the accounts listed below.
6. FORTÉ Germany is entitled to invoice the total price in the following instalments:
  - 40 % after placing the order,
  - 30 % after delivery of the goods,
  - 20 % after completion of the installation,
  - 10 % after final acceptance.
7. Unless otherwise agreed, invoices are to be paid within 10 calendar days of receipt without deduction.
8. FORTÉ Germany may claim default interest in the amount of 9 percentage points above the base interest rate. Further claims for damages remain unaffected.
9. The granting of a discount requires a separate agreement in text form and does not apply if the customer is also in arrears with the payment of other due claims.
10. In the event of default of payment by the customer, FORTÉ Germany is entitled, without prejudice to further legal rights, to exercise a right of



retention for all outstanding deliveries and services without prior notice or to demand advance payment or security in this respect. The same applies if, after acceptance of the order, FORTÉ Germany becomes aware of facts that give rise to justified doubts about the solvency of the customer.

11. The customer is only entitled to offset if his counterclaims are legally established, undisputed or recognised by FORTÉ Germany. A right of retention only exists if it is based on the same contractual relationship.
12. Bills of exchange and cheques must only be accepted by FORTÉ Germany if this has been agreed in writing and then only on account of payment. Payment is only deemed to have been made when the amount owed has been irrevocably credited.

#### **§ 4 Delivery and performance deadlines, interruptions**

1. Delivery and execution dates are only binding if they have been confirmed by FORTÉ Germany in text form.
2. The prerequisite for compliance with the deadlines is that the customer fulfils his obligations to cooperate in a timely and complete manner. Delays caused by a lack of co-operation on the part of the customer extend the agreed deadlines appropriately. The fact that FORTÉ Germany always deploys existing personnel and other resources to full capacity must be taken into account.
3. In the event of force majeure or other circumstances for which FORTÉ Germany is not responsible (e.g. strike), delivery and performance deadlines are extended accordingly.
4. If a confirmed date is cancelled or postponed at the request of the customer for whatever reason, the customer shall bear the following costs:
  - a) a flat-rate expense allowance of € 340, which covers the internal administrative and organisational costs,
  - b) Costs for booked subcontractors or freelancers, unless FORTÉ Germany can cancel them free of charge or deploy them elsewhere,
  - c) Costs for employees who cannot be deployed elsewhere in accordance with the calculated expenses (e.g. according to the hourly or daily rate according to the order confirmation),
  - d) Storage fees for goods already ordered that have to be stored due to postponement or cancellation. These are charged per calendar day and depending on the scope of storage.



- e) Costs for the pre-financing of goods that have already been purchased as part of the project. These include, in particular, interest or other financing costs incurred as a result of the delay,
  - f) Costs for guarantees or securities that were provided as part of the project and must be additionally extended or adjusted as a result of the postponement or cancellation.
5. If performance is interrupted for a period of 30 calendar days without the service becoming permanently impossible, the services performed up to that point shall be invoiced according to the contract prices. In addition, the demonstrable costs already incurred and included in the contract prices for the part of the service not yet performed shall be reimbursed, provided these are properly documented and submitted to the client. The interruption must be reported to the client immediately, including an estimate of the expected duration of the interruption
6. If FORTÉ Germany has ordered goods in reliance on an installation date confirmed by the customer, FORTÉ Germany is entitled to invoice the goods in full if the installation date is postponed by more than 30 calendar days for reasons for which the customer is responsible or which lie within the customer's sphere of risk. The same applies if FORTÉ Germany could assume, based on the written communication or the clear behaviour of the customer, that the installation should take place within an indefinite but clearly defined period (e.g. "installation in May"). In this case, the claim for payment arises at the end of the month in which the installation was originally planned. FORTÉ Germany can also claim costs in accordance with § 4 clauses 4 d and e.

## § 5 Duty to co-operate

1. The customer is obliged to ensure at his own expense that FORTÉ Germany is provided with the necessary conditions for the provision of the agreed deliveries and services in good time and in accordance with the mutually agreed dates and deadlines.
2. The customer's obligations to co-operate include in particular
  - a) the timely and professional execution of all necessary preparatory work by third party trades (eg interior work, wall and ceiling reinforcements, electrical work, carpentry, building services, network and IT work);
  - b) securing and cabling for the media technology by an electrician of the client and ensuring that all floor boxes have the necessary inserts, are tested and labelled;
  - c) adherence to jointly agreed milestone dates and deadlines (e.g. approval of M+W planning, ensuring a dust-free working environment);



- d) timely provision of equipment and system components and furniture, e.g. tables, desks, if required for the installation, as well as licences for Microsoft Teams Rooms systems, digital signage displays, door signs, etc., if applicable;
  - d) the timely provision of necessary architectural and building plans as well as current M+W plans approved for execution by third-party trades, in each case in an open file format (e.g. CAD);
  - e) the creation of the necessary logistical (unhindered access to all rooms affected by the installation, lockability of the rooms or granting of controlled access) and technical prerequisites, in particular the provision of Internet access and other data network resources;
  - f) the immediate examination and approval of supplementary offers;
  - g) guaranteeing a dust-free working environment, insofar as this is necessary for the performance of the work.
3. The customer is also obliged to apply for the public law authorisations required for the installation of the systems in good time and to ensure that these are available before the start of the work.
  4. Fire protection measures, if necessary, are the responsibility of the customer.
  5. At the request of FORTÉ Germany, the customer is obliged to check and sign a work report or a measurement at the end of the week or after completion of the work during the week as proof of the installation services provided (construction diary).
  6. Parking facilities must be provided by the customer. If additional logistical costs are required, e.g. special delivery or transport by crane or removal lift, these shall be borne by the customer.
  7. If the customer or one of his authorised representatives violates an obligation to cooperate, the customer has to compensate FORTÉ Germany for the resulting damage. This is calculated according to § 4 No. 4. The assertion of further claims for damages by FORTÉ Germany remains unaffected.

## § 6 Acceptance

1. If FORTÉ Germany demands acceptance of the services after completion of the services - if necessary also before expiry of the agreed execution period - the customer must carry this out within 12 working days, unless another period has been agreed. At the request of FORTÉ Germany, self-contained parts of the services are to be accepted separately (partial acceptance). If the customer disregards the acceptance within this period,



the acceptance is deemed to be fictitious after expiry of the period, unless the customer has refused acceptance for justified reasons. In this case, the services shall be deemed to have been accepted and any claims for defects on the part of the customer shall become time-barred upon expiry of the deadline.

2. Defects in the installation services identified during acceptance shall be categorised according to the following defect classes:

**Defect class 1:** The defect means that the goods and services to be accepted or essential partial services cannot be used.

**Defect class 2:** The defect leads to considerable restrictions in the use of essential functions, which cannot be circumvented by suitable measures for an appropriate period of time that is reasonable for the customer.

**Defect class 3:** Other defects that do not significantly impair use or essential functions.

3. The customer is entitled to refuse acceptance only due to defects of error classes 1 and 2. Defects in defect class 3 do not prevent the installation services from being accepted, but are to be rectified as part of the agreed rectification of defects.
4. If the customer commissions the work without prior consultation with FORTÉ Germany, acceptance is deemed to have taken place, unless otherwise agreed in writing.
5. Upon acceptance, the risk of accidental loss and accidental deterioration of the services is transferred to the customer. The customer bears the risk of compensation even before acceptance if the service performed in whole or in part is damaged or destroyed by force majeure, war, riot or other objectively unavoidable circumstances for which FORTÉ Germany is not responsible.

## § 7 Liability for defects

1. FORTÉ Germany must provide the customer with services free of material defects at the time of acceptance. A service is free of material defects if it has the agreed quality and corresponds to the generally recognised rules of technology and customary quality. If the quality has not been expressly agreed, the service shall be deemed free of material defects if it is suitable for the contractually stipulated use, otherwise for normal use and



- has a quality that is customary for services of the same type and that the customer can expect according to the type and purpose of the service.
2. FORTÉ Germany is not liable for defects that were obvious at the time of acceptance and were not reported in writing by the customer, unless these defects were fraudulently concealed.
  3. FORTÉ Germany is a reseller of equipment from other manufacturers and as such must pass on to the customer all applicable manufacturer's warranties that are set out in writing in the respective service description, but may not assume any warranty for components of the system beyond the applicable manufacturer's warranty (unless this is expressly assured in writing).
  4. If no special limitation period for claims for defects has been agreed, this shall be 2 years from acceptance of the entire service. For self-contained partial services, the limitation period begins with the respective partial acceptance.
  5. During the limitation period, FORTÉ Germany is obliged to rectify at its own expense all defects that are attributable to a service that is contrary to the contract, provided that the customer requests this in text form before the expiry of the period. The claim for rectification of defects expires 2 years after receipt of the request in text form by the contractor.
  6. For electrical appliances and other goods delivered or installed by FORTÉ Germany, only the manufacturer's warranties apply. The limitation period for the customer ends as soon as the manufacturer's warranty period towards FORTÉ Germany has expired.
  6. FORTÉ Germany is not obliged to remedy defects if these are due to a lack of regular maintenance. The customer must submit maintenance logs to FORTÉ Germany upon request. Maintenance must be carried out by specialised companies or appropriately qualified personnel. In the case of complex installations, FORTÉ Germany will point out to the customer when submitting the offer that maintenance work may only be carried out by itself. In these cases, FORTÉ Germany's obligation to rectify defects does not apply even if regular maintenance has been carried out by third parties.
  7. If the elimination of a defect is unreasonable for the customer, impossible or would require a disproportionate effort and is refused by FORTÉ Germany, the customer can reduce the remuneration by declaration to FORTÉ Germany (§ 638 BGB).
  8. FORTÉ Germany is liable for culpably caused defects for damages resulting from injury to life, body or health as well as for damages caused by intentional or grossly negligent behaviour. FORTÉ Germany is liable for other damages within the scope of the statutory provisions, in particular if



- a) the damage to the structural system is due to a significant defect that significantly impairs the usability and is due to the fault of FORTÉ Germany,
- b) the defect is due to a violation of the recognised rules of technology, or
- c) the defect is due to the lack of a contractually agreed quality.

## § 8 Liability

1. FORTÉ Germany is liable without limitation for damages caused by intentional or grossly negligent behaviour, as well as for injury to life, body or health.
2. In the case of simple negligence, FORTÉ Germany is only liable for damages resulting from the violation of essential contractual obligations (cardinal obligations). Liability for indirect damages, loss of profit, business interruption, loss of data or other indirect consequential damages is excluded to the extent permitted by law.
3. The limitations of liability do not apply if FORTÉ Germany has assumed a guarantee or if it is legally liable, in particular under the Product Liability Act.

## § 9 Retention of title

1. Delivered goods remain the property of FORTÉ Germany until full payment of the agreed price.
2. In the event of late payment, FORTÉ Germany is entitled to reclaim the goods.

## § 10 Naming the customer and the project

1. After successful completion of the project, the customer authorises FORTÉ Germany to name him as a reference customer and to use the customer's company logo on its website and in marketing materials.
2. The client undertakes to co-operate in the preparation of case studies on a case-by-case basis after consultation and to be available as a reference contact person.
3. All marketing documents relating to the customer or the project shall be submitted to the customer for approval prior to publication.
4. The customer can revoke his consent to be named as a reference customer or to the use of his logo at any time in text form with effect for the future.
5. FORTÉ Germany undertakes to comply with the applicable data protection regulations within the scope of the cooperation and not to use or publish



any confidential information or personal data of the customer without express consent.

## § 11 Miscellaneous

1. This contract and the entire legal relationship between the parties are subject to the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
2. The place of fulfilment for all deliveries and services arising from this contractual relationship is the registered office of FORTÉ Germany, unless otherwise agreed in the order confirmation
3. For all disputes arising from or in connection with this contract, the place of jurisdiction is Frankfurt am Main, as far as legally permissible.
4. The customer agrees that his personal data may be stored and processed electronically within the framework of the statutory provisions, insofar as this is necessary for the proper processing of the contractual relationship. FORTÉ Germany undertakes to comply with the relevant data protection laws, in particular the EU General Data Protection Regulation (GDPR).

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