

FOGT Global Standard Terms and Conditions of Sale

1. **QUOTATIONS AND ACCEPTANCE OF PURCHASE ORDERS.** The quotation presented with these Terms and Conditions is voidable by Seller unless accepted by Buyer within 30 days from the date issued by Seller, and it is subject to change by Seller before acceptance. All purchase orders are subject to written acceptance by Seller. Issuance of a purchase order by Buyer or acceptance of the Products by Buyer constitutes acceptance of the terms and conditions of this Contract, and any additional or different terms or modifications proposed by Buyer, whether in a purchase order or otherwise, are rejected by Seller except for those terms and conditions related to Seller's Product prices, quantity, specifications, delivery schedules and locations (collectively referred to as "this Contract"). No other added or boilerplate terms of Buyer will apply.
2. **DELIVERY.** Delivery shall be made Ex Works (Incoterms 2010) from Seller's place of business. Title and risk of loss to the Products pass to Buyer upon delivery, and expenses shall thereafter rest upon Buyer including without limitation all risks and expenses incurred in the storage and transportation of the Products as well as all insurance, fees, charges, taxes, customs duties and other governmental charges or levies and all other expenses whatsoever thereafter incurred with respect to the Products. Delivery dates are estimated only and subject to change. Seller may make delivery in installments, each of which may be separately invoiced and paid as billed without regard to subsequent deliveries. Failure to pay for any installment when due shall excuse Seller from making further deliveries. Delay in delivery of any instalment shall not relieve Buyer of its obligation to accept remaining instalments. Seller will endeavor to meet the stated delivery dates to the Buyer, but will not be liable for any expenses or damages incurred as a result of late delivery.
3. **PRICE.** Payment shall be made in the currency as indicated on the invoice, net 30 days from date of Seller's invoice. Prices do not include sales, use, excise, or similar taxes. All such taxes shall be paid by the Buyer. Overdue payments shall bear interest at the lesser of 18% per annum (1.5% per month) or the maximum rate permitted by law. Seller shall have the right, among other remedies, including the right of setoff, either to terminate this Contract or to suspend further deliveries under this Contract and/or other agreements with Buyer, in the event Buyer fails to make any payment when due. Buyer shall be liable for all expenses related to collection of past due amounts, including attorneys' fees. Seller may require full or partial payment in advance of delivery or change credit or payment terms if, in Seller's opinion, the credit or financial condition of Buyer is, or is about to become, impaired. If Buyer requests delayed delivery, Seller may bill for Products when ready for delivery and charge reasonable daily storage fees. Seller retains a security interest in Products, equipment and tooling until payment, and Buyer will execute any paperwork required by Seller to perfect any such security interest.
4. **LIMITED WARRANTY.** Seller warrants to Buyer that on the date of delivery: (a) the Products will be free from defects in workmanship and material, and will conform to Seller's specifications and/or Seller's statements of work, or those specifications provided by Buyer and agreed to by Seller; and (b) Seller will transfer to Buyer ownership and good title to Products delivered, free of all liens and encumbrances. Seller will repair or replace free of charge, any parts of the Products manufactured by Seller which are defective and are returned to Seller at the expense of Buyer provided that the notice of claim of defects is received within six (6) months from date of shipment (the "Warranty Period"). Accessories supplied by Seller but manufactured by others carry whatever warranty such manufacturers have conveyed to Seller. Any warranty claims by Buyer shall be provided to Seller in writing.

Unless explicitly agreed either in writing or in written specifications, Products identified by reference of product styles, types, shape or form of third parties, such as Original Equipment Manufacturers (each a "Third Party" or "OEM" reference), may be substantially similar to but may not in each case be exactly the same and not match the exact Third Party's product specifications, shape, form, function or fitness for use or functionality together with other Third Party parts, components or systems (Third Party Product Compatibility). Buyer is solely responsible for Third Party Product Compatibility as well as any and all related validation, testing and regulatory compliance. Failure by Buyer to give written notice of claim within the Warranty Period shall be deemed as an unconditional waiver of Buyer's warranty claim. Buyer's sole and exclusive remedy for a valid warranty claim is either replacement of the Product or a full refund of the price paid by Buyer for the Product. This remedy does not include the cost of installation, removal, dismantling, or reinstallation. Seller shall have no liability to the extent Products are or have been: (a) modified by Buyer or a third party; (b) modified by Seller at Buyer's request; (c) made to specifications and/or design or other Product related information provided by Buyer or provided by a third party upon Buyer's request; (d) used or installed in a way not known to Seller or operated under conditions not known to Seller; or (e) subject to misuse, abuse or improper storage, installation or maintenance. THE WARRANTIES AND ANY ASSOCIATED REMEDIES SET OUT OR REFERENCED HEREIN ARE EXCLUSIVE. NO OTHER WARRANTY, WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY SELLER OR MAY BE INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE. TO THE EXTENT ALLOWED BY LOCAL LAW SELLER DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES OF NON-INFRINGEMENT.

5. **PURCHASER RESPONSIBILITY AND INDEMNITY; LIMITATION OF LIABILITY.** Buyer, through its own product design capabilities, analysis and testing, is solely responsible for: (a) making the final selection of the which Products are used or installed in Buyer's system; (b) fitness of a Product for use in a system or system component; (c) assuring that all performance, endurance, maintenance, safety and warning requirements of the application are met; (d) evaluation and validation of all aspects of the application; (e) compliance with applicable industry standards and provision of Product information to the supply chain. If Seller provides Product or system options based upon data or specifications provided by Buyer, the Buyer is responsible for determining that such data and specifications are suitable and sufficient for all applications and reasonably foreseeable uses and risks of the Products or systems. Buyer shall indemnify, defend, and hold Seller harmless from any losses, claims, liabilities, damages, lawsuits, judgments and costs (including attorney fees and defense costs), whether for personal injury, property damage, patent, trademark or copyright infringement or any other claim related to or arising out of: (a) Third Party Product Compatibility; (b) improper selection, application, design, specification or other misuse of Products; (c) any other act or omission, negligence of Buyer; (d) Seller's use of patterns, plans, drawings, or specifications furnished by Buyer to manufacture Products; or (e) Buyer's failure to comply with these terms and conditions. Seller shall not indemnify Buyer under any circumstance except as otherwise provided herein. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND ARISING FROM OR RELATING TO THE OBLIGATIONS UNDER THIS CONTRACT. THE TERM "CONSEQUENTIAL DAMAGES" INCLUDES, BUT IS NOT LIMITED TO, LOSS OF USE, LOSS OF REVENUE AND COST OF CAPITAL. EXCEPT FOR PERSONAL INJURY OR DEATH DUE TO SELLER'S NEGLIGENCE OR WILLFUL MISCONDUCT, THE TOTAL DAMAGES THAT CAN BE AWARDED IN ANY CLAIM BY BUYER RELATING TO SELLER'S OBLIGATIONS UNDER THIS CONTRACT (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE), SHALL BE LIMITED TO THE AMOUNT OF THE BUYER'S PURCHASE ORDER FOR THE PRODUCTS. THE PARTIES EXPRESSLY AGREE THAT THE ABOVE LIMITATIONS ON LIABILITY PROVISION SHALL REMAIN IN FULL FORCE AND EFFECT EVEN IF IT IS FOUND THAT PURCHASER'S EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
6. **FORCE MAJEURE.** Neither party will be liable if its performance is delayed or made impossible or commercially impracticable due to acts of God, civil commotion, terrorism, military authority, war, riot, fire, labor trouble or strikes, unavailability of materials or components, explosion, breakdown or accident, delay in transportation, plant shutdown, compliance with governmental requests, laws, regulations, order or actions, unforeseen circumstances, or causes beyond such party's reasonable control.
7. **COMPLIANCE WITH LAW.** The parties will comply with all applicable federal, state, local and foreign laws, orders, rules, regulations and ordinances, including export controls and import compliance, anti-boycott measures, Foreign Corrupt Practices Act ("FCPA"), embargoes, sanctions, shipment to prohibited destinations or end-user, and for a prohibited end-use. If Buyer exports, re-exports, diverts, transfers or imports Products, or technology or software related to the Products, Buyer assumes responsibility for complying with applicable laws and regulations and for obtaining required export and import authorizations of any applicable jurisdiction or country. Notwithstanding the foregoing, unless otherwise agreed in this Contract, Seller shall not be responsible for regulatory and other legal compliance: (a) the European regulation for the Registration, Evaluation, Authorization and Restriction of Chemicals ("REACH"), (b) as to the products made by Buyer which incorporate the Products, (c) as to any use of Products by Buyer or Buyer's customers other than as covered by the Limited Warranty set out herein above.

8. **INTELLECTUAL PROPERTY RIGHTS.** Seller will have and retain all intellectual property rights in all Products, tooling and associated materials, furnished by Seller in connection with or pursuant to this Contract, including, without limitation, patents, utility models, design rights (and any pending applications), trademarks, copyrights, technical, business, economic or know-how information, trade secrets, confidential proprietary information, inventions, data, formulae, material compositions, drawings, specifications, prototypes, manufacturing processes, product pricing and any right related thereto (whether or not patentable) that is not generally available to the public ("Proprietary Materials").
9. **PATENT INFRINGEMENT.** Seller will defend or settle, at its sole expense, any third-party claim, demand or suit against Buyer alleging that the use of any Product designed and made by Seller, infringes a E.U. Country, U.K. or U.S. patent, copyright, trade secret or other intellectual property right ("IP Claim(s)"); provided: (a) the alleged infringement does not arise from Seller's compliance with specifications or designs furnished by Buyer; (b) Seller receives prompt written notice of such IP Claim and exclusive control over its defense and/or settlement; and (c) Buyer provides Seller with all information available to Buyer for the defense and cooperates with Seller in the defense, and does not take a position adverse to Seller. Further, Seller will have no liability under this Section if and to the extent that an IP Claim is based on: (1) a Product modification made by Buyer or a third party, or made by Seller at Buyer's request; (2) use or interconnection by Buyer of the Product in combination with other products not made or sourced by Seller; or 3) Products made to design or specifications not provided by Seller. Except for third party IP Claims above, and subject to the limitations set out in above, Seller's exclusive obligation to Buyer as to Products declared to infringe, and Seller's right as to Products that Seller believes are likely to infringe, is the acquisition of a license, or the replacement of Products with non-infringing goods, or the modification of the Products so that they are non-infringing. If Seller determines that none of the foregoing alternatives are reasonably available, Seller will issue a refund equal to the purchase price for the affected Products if within one year of delivery or the Buyer's net book value of the affected Product at the time of the refund. Regarding Buyer's products made by or utilizing the designs of Buyer, or products combined or interconnected with Products furnished under this Contract, Buyer will defend and settle at its sole expense, any third party claim, demand or suit against Seller alleging any of such products infringes a patent, copyright, trade secret or other intellectual property right, provided: (i) the alleged infringement does not arise from Buyer's compliance with specifications or designs furnished by Seller; (ii) Buyer receives prompt written notice of such claim, demand or suit and exclusive control over its defense and/or settlement; and (iii) Seller provides Buyer with all information available to Seller for the defense and cooperates with Buyer in the defense, and does not take a position adverse to Buyer. This Section states the entire liability of Seller and Buyer's limited remedies as to IP Claims.
10. **CONFIDENTIALITY.** If the parties have entered into a Confidentiality Agreement ("CA") or Non-Disclosure Agreement ("NDA") or Non-Examination Agreement ("NEA") in the case of FOGT's proprietary materials, the terms and conditions of the referenced agreement shall apply and control for confidentiality obligations between the parties. In connection with this Contract, Buyer may have access to Seller's confidential information, including, without limitation inventions, developments, know how, specifications, business plans, results of testing, systems, financial information, product information, methods of operation, manufacturing processes, customer information, supplier information and compilations of data ("Seller's Confidential Information"). Buyer shall use Seller's Confidential Information only for the purposes contemplated under this Contract and shall not disclose it to third parties. Buyer shall maintain the confidentiality of Seller's Confidential Information in the same manner, but in no event less than the manner, in which it protects its own confidential information. Buyer is permitted to disclose Seller's Confidential Information to its employees and authorized subcontractors on a need to know basis only, provided that such employees and authorized subcontractors have written confidentiality obligations to Buyer no less stringent than the confidentiality obligations under this Section. Upon termination of this Contract, Buyer shall return Seller's Confidential Information and shall not use Seller's Confidential Information for its own, or any third party's benefit. Buyer's confidentiality obligations shall survive termination of this Contract for so long as Seller's Confidential Information remains confidential. Seller shall be entitled to injunctive relief, including, but not limited to, emergency, preliminary, temporary and permanent injunctions, from any court of competent jurisdiction as may be necessary to enjoin any violation of the foregoing covenants, without the necessity of proving immediate irreparable harm or an inadequate remedy at law.
11. **TERMINATION BY SELLER.** In addition to any other rights of Seller to terminate or suspend this Contract, Seller may, upon written notice to Buyer, immediately terminate or suspend all or any part of this Contract without any liability to Buyer, (a) if Buyer (i) repudiates, breaches, or threatens to breach any of the terms of this Contract, (ii) fails to accept or threatens not to accept Products in accordance with this Contract, or (iii) fails to make timely payment, or (b) upon the occurrence or threat of insolvency or bankruptcy of Buyer. Upon termination of this Contract by Seller: (A) Seller will be relieved of any further obligation to Buyer; (B) Buyer will be liable to Seller for the immediate payment of amounts then billed to date by Seller to Buyer; (C) Buyer will purchase and pay Seller immediately for all unique raw materials, work in process and finished goods under this Contract; (D) Buyer will reimburse Seller for any unreimbursed and unamortized research and development costs, capital equipment, and supplies that are unique to the Products; and (E) Buyer will immediately reimburse Seller for all preparation and other expenses incurred by Seller or its subcontractors in connection with this Contract and for all other losses or costs arising from termination.
12. **TERMINATION BY PURCHASER.** If Seller fails to perform any material obligation under this Contract or delivers Product after an agreed upon delivery date, and, if the non-performance can be cured but Seller fails to cure the non-performance within thirty (30) days after written notice from Buyer, Buyer may terminate this Contract without further obligation. Otherwise, upon giving written notice to Seller not less than ninety (90) days prior to shipment Buyer may cancel any purchase order or scheduled delivery under this Contract, in which case: (a) Seller will be relieved of any further obligation to Buyer; (b) Buyer will pay all amounts then due; (c) Buyer will purchase and pay Seller immediately for all unique raw materials, work in process and finished goods under this Contract; and (d) Buyer will reimburse Seller for any unreimbursed and unamortized research and development costs, capital equipment, and supplies that are unique to the Products.
13. **JURISDICTION AND VENUE.** This Contract will be governed by and construed in accordance with the laws of the Seller's entity entering into this Contract. The Convention on Contracts for the International Sale of Goods is expressly excluded. Subject to the provisions of Dispute Resolution below, each party irrevocably submits to the jurisdiction of the Courts of the Seller's entity entering into this Contract and hereby waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding.
14. **DISPUTE RESOLUTION.** In the event of any dispute or disagreement between Seller and Buyer arising out of or relating to this Contract or a Product ("Dispute"), such Dispute, upon the written request of Seller or Buyer, shall be referred to the chief financial officers of each party or their respective designees. The chief financial officers or their respective designees shall promptly meet in good faith to resolve the Dispute and if they do not agree upon a resolution within thirty (30) calendar days after the reference of the Dispute to them, then such Dispute, upon written notice from one party to the other of its intention to instigate proceedings, will be passed to the party's legal agents.
15. **WAIVER, ENTIRE AGREEMENT, SEVERABILITY.** The failure of either party to enforce any right or remedy provided in this Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy. This Contract constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of this Contract. This Contract may not be modified unless in writing and signed by authorized representatives of both parties. Any provision found invalid or unenforceable will not affect the validity or enforceability of any other provision and the invalid provision may be judicially modified to the extent enforceable.
16. **ONE YEAR LIMITATION.** Neither party may bring a claim or action arising out of or related to this Contract, including any claim of fraud or misrepresentation, more than one (1) year after the cause of action accrues.